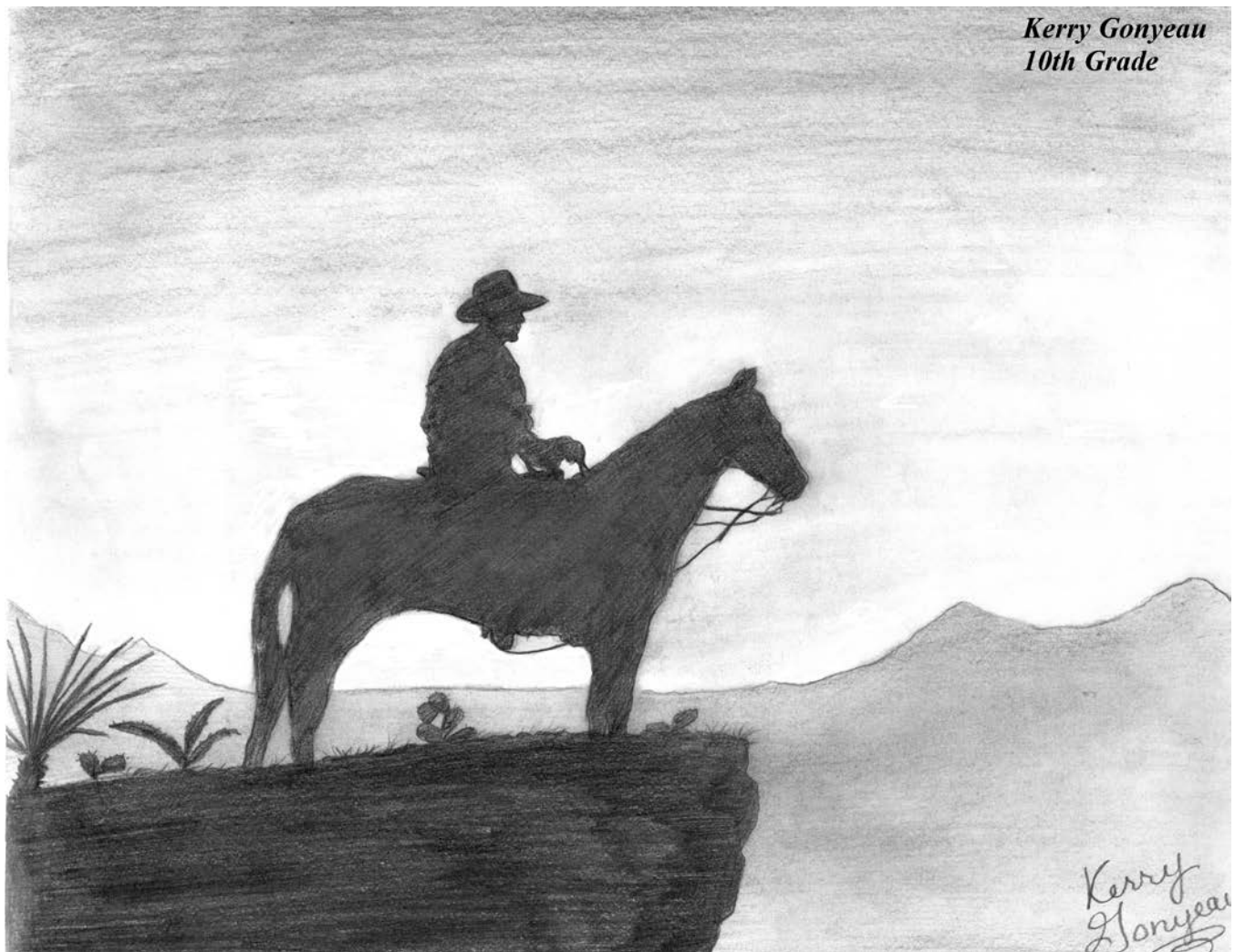

TEXAS REGISTER

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April 19, 2013

Pages 2429 - 2570



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Requests for Opinions

RQ-1116-GA

Requestor:

The Honorable Jerry Rochelle
Bowie County Criminal District Attorney
601 Main
Texarkana, Texas 75504

Re: Whether a county must reimburse a utility for relocating a water line in Department of Transportation right-of-way (RQ-1116-GA)

Briefs requested by May 3, 2013

RQ-1117-GA

Requestor:

The Honorable Rene O. Oliveira
Chairman, Committee on Business & Industry
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Application of Government Code section 573.062, the nepotism continuous employment exception, to a school district board member's spouse (RQ-1117-GA)

Briefs requested by May 6, 2013

RQ-1118-GA

Requestor:

The Honorable Susan D. Reed
Bexar County Criminal District Attorney
Cadena-Reeves Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

Re: Whether a bail bond licensee's exclusive right to advertise in a magazine distributed in the county jail is a solicitation in violation of Occupations Code section 1704.304 (RQ-1118-GA)

Briefs requested by May 6, 2013

For further information, please access the website at
www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301419
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 8, 2013

◆ ◆ ◆

Opinions

Opinion No. GA-0997

The Honorable Richard E. Glaser
Fannin County Criminal District Attorney
101 East Sam Rayburn Drive, Suite 301
Bonham, Texas 75418

Re: Whether a district attorney may, pursuant to section 41.005, Government Code, retain a commission on bond forfeiture collection (RQ-1090-GA)

S U M M A R Y

Section 41.005 of the Government Code authorizes a district attorney to separate a portion of bond forfeiture collections as a commission without the approval of the commissioners court. By statute, the commission shall be deposited in the county treasury in a fund to the credit of the person or department collecting the money. The commissioners court generally determines how such commissions may be used, subject to any other legal restrictions on its authority.

For further information, please access the website at
www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301453
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 9, 2013

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend §§354.1061, 354.1071, and 354.1101, all of which concern Additional Claim Information Requirements.

Background and Justification

The purpose of these changes is to clarify claim information requirements related to diagnosis codes for physician and physician assistant services, hospital services, and podiatry services.

These proposed changes reduce risk for provider confusion related to required diagnosis code information on claims by deleting text that is no longer relevant for claims adjudication. The proposed amendments also update an obsolete citation and make references to a physician gender-neutral.

Section-by-Section Summary

The proposed amendment to §354.1061 deletes a reference to "major" diagnosis in paragraph (6) and deletes references to "primary" and "secondary" diagnoses in paragraph (7). Information regarding a client's major diagnosis, primary diagnosis, and secondary diagnosis is no longer relevant for claims. In addition, the proposed amendment updates the obsolete citation to §29.1 with a reference to §354.1001 and, in paragraph (7), inserts the phrase "or her" after "him" to make the reference to a physician gender-neutral.

The proposed amendment to §354.1071 deletes references to "primary" and "secondary" diagnoses in paragraphs (1)(F) and (2)(C). Information regarding a client's primary and secondary diagnoses is no longer relevant for claims. In addition, in paragraph (1)(N), the proposal inserts the phrase "or she" after "he" to make the reference to a physician gender-neutral.

The proposed amendment to §354.1101 deletes a reference to "major" diagnosis in paragraph (4) and deletes references to "primary" and "secondary" diagnoses in paragraph (5). Information regarding a client's major diagnosis, primary diagnosis, and secondary diagnosis is no longer relevant for claims. In addition, in paragraph (5), the proposal inserts the phrase "or her" after "him" to make the reference to a physician gender-neutral.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendments are in effect, there will be no fiscal impact to the state or local governments as a result of these amendments.

Ms. Rymal anticipates that there will be no economic cost to persons who are required to comply with the proposed amendments during the first five years the rules will be in effect. There is no anticipated negative impact on local employment.

Small and Micro-Business Impact Analysis

HHSC has determined that there will be no adverse economic impact on small businesses or micro-businesses to comply with the proposed rule amendments, as these amendments will not require a business to alter its business practices.

Public Benefit

Chris Traylor, Chief Deputy Commissioner for HHSC, has determined that for each of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the amendments. The anticipated public benefit of the amendments will be improved understanding of medical services policy by Medicaid and CHIP providers of services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Texas Government Code §2001.0225. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under the Texas Government Code §2007.043.

Public Comment

Written comments on the proposal may be submitted to Garry Walsh, Operations Oversight, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H-390 91X; by fax to (512) 249-3707; or by e-mail to garry.walsh@hhsc.state.tx.us

within 30 days of the publication of this proposal in the *Texas Register*.

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1061

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§354.1061. Additional Claim Information Requirements.

In addition to the general requirements in §354.1001 [§29.4] of this title (relating to Claim Information Requirements), the following information is required on claims for physician services:

- (1) the appropriate identification number of each physician providing a specific service (except pathologists or radiologists in group practices);
- (2) place of service;
- (3) the type of each diagnostic, treatment, or surgical procedure performed;
- (4) the number of miles for which a travel charge is made;
- (5) the date on which each service was provided;
- (6) the individual charge for each service [~~related to the major diagnosis~~];
- (7) diagnosis(es) [~~to a maximum of two primary and three secondary diagnoses~~] of the condition(s) for which treatment and services were provided. With respect to diagnostic or other services furnished at the request of another physician, this requirement may be waived by the health insuring agent if the physician providing the service shows that such information is not available to him or her;
- (8) the name, address, and appropriate identification number of the ordering physician or doctor if services were provided by another physician or doctor;
- (9) all pertinent supplemental information, including clarification of the diagnoses in terms of the degree or extent of involvement necessary to substantiate the need for the services provided or charges made, or both; and
- (10) for medically necessary hysterectomies, a patient's acknowledgment statement must be attached or added to each claim form which states that the person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing. The individual or her representative, if any, must sign the written acknowledgment of receipt of that information prior to the actual surgery.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301376

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 424-6900



DIVISION 6. HOSPITAL SERVICES

1 TAC §354.1071

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§354.1071. Additional Claim Information Requirements.

In addition to the general requirements in §354.1001 of this subchapter (relating to Claim Information Requirements), HHSC requires that the following information be submitted with hospital claims:

- (1) Inpatient hospital care.
 - (A) Copy of the patient's itemized daily charges, including data elements and format as specified by HHSC.
 - (B) Date and hour of admission and discharge, including inclusive dates during which services were provided if claims are made for a period other than that beginning on the date of admission and ending with the date of discharge.
 - (C) Number of days of care.
 - (D) Charges for bed, meals, and nursing care.
 - (E) Admitting diagnoses or symptoms.
 - (F) Discharge diagnoses (or diagnoses at end of period for which a claim is made if discharge has not occurred) [~~up to a maximum of two primary diagnoses and three secondary diagnoses~~].
 - (G) Surgical procedures, if any.
 - (H) Individual charges for ancillary services approved by HHSC.
 - (I) Dates on which the various types of services were provided. The posting date is satisfactory except when a portion of the period of care precedes or succeeds the certified period of eligibility. In such cases, record the actual date that each of the types of services listed in this paragraph was provided.
 - (J) Certification by the hospital that the hospital has on file a record that services provided were upon order of a physician or doctor, a record of admission, continued stay certification, extension recertification, and 60-day recertification.
 - (K) The hospital's medical record number.
 - (L) The name, address, and appropriate identification number of the attending physician and, if appropriate, consulting physician(s) or doctor(s).

(M) The certification portion of the Texas Admissions and Review Program (TARP) abstract must accompany claims from all certified hospitals. The entire abstract must accompany claims from noncertified hospitals.

(N) For medically necessary hysterectomies, a patient's acknowledgment statement that the person who secured authorization to perform the hysterectomy has informed the patient and her representative, if any, orally and in writing, that the hysterectomy renders the patient permanently sterile. The patient or her representative, if any, must sign the written acknowledgment of receipt of that information before the surgery. The provider must submit an acknowledgment statement with hospital claims for hysterectomies unless the patient is sterile at the time of the hysterectomy, or the patient requires a hysterectomy on an emergency basis because of a life-threatening situation and the physician determines that prior acknowledgment is not possible. If one of the exceptions applies, the physician performing the hysterectomy must certify in writing, to HHSC or its designee, that the specific circumstance existed at the time he or she operated.

(O) Present on admission indicators are required for all inpatient claims.

(2) Hospital outpatient services.

(A) Surgical procedure(s) related to each specific diagnosis, where possible.

(B) Medical treatment(s) related to each specific diagnosis, where possible.

(C) Diagnosis(es) [~~Diagnosis; to a maximum of two primary and three secondary diagnoses~~].

(D) Charges for each service.

(E) Date of each service.

(F) Name, address, and appropriate identification number of the attending physician and (if known) of ordering and consulting physician(s).

(3) An erroneous surgery, procedure, or treatment that is classified by HHSC as a preventable adverse event must be submitted with the appropriate modifier, as defined by HHSC or its designee, on all lines related to the erroneous surgery, procedure, or treatment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301377

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 424-6900



DIVISION 8. PODIATRY SERVICES

1 TAC §354.1101

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which

provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§354.1101. Additional Claim Information Requirements.

In addition to the general requirements in §354.1001 of this title (relating to Claim Information Requirements), the following information is required on claims for podiatry services:

- (1) place of service;
- (2) the type of each diagnostic, treatment, or surgical procedure;
- (3) the number of miles for which a travel charge is made;
- (4) the individual charge for each service [~~related to the major diagnosis~~];
- (5) diagnosis(es) [~~to a maximum of two primary and three secondary diagnoses~~] of the condition(s) for which treatment and services were provided. With respect to diagnostic or other services furnished at the request of a physician or another podiatrist, this requirement may be waived by the health insuring agent if the podiatrist providing the services shows that such information is not available to him or her;
- (6) name, address, and appropriate identification number of the ordering physician or podiatrist if services were provided by a non-ordering podiatrist; and
- (7) all supplemental information, including clarification of the diagnoses in terms of the degree or extent of involvement, necessary to substantiate the need for the services provided or changes made, or both.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301378

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.451, concerning Definitions and General Reimbursement Information; §355.452, concerning Cost Reporting Procedures; §355.453, concerning Allowable and Unallowable Costs; §355.703, concerning Basic Objectives and Criteria for Review of Cost Reports; §355.704, concerning Determination of Inflation Indices; §355.705, concerning Notification; §355.706, concerning Adjusting Reimbursement; §355.708, concerning Allowable and Unallowable Costs; and §355.709, concerning Revenues.

Background and Justification

The rules proposed for repeal govern various aspects of cost reporting for providers in programs serving individuals with an intel-

lectual disability or related conditions. The same provisions contained in these rules also appear in Subchapter A of this chapter (relating to Cost Determination Process). Therefore, HHSC is proposing to repeal these rules because they are obsolete and duplicative.

Section-by-Section Summary

The proposed repeals of §§355.451 - 355.453, 355.703 - 355.706, 355.708, and 355.709 remove obsolete and duplicative rules governing various aspects of cost reporting.

Fiscal Note

James Jenkins, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the proposed repeals are in effect there will be no fiscal impact to state government. The proposed repeals will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the proposed repeals.

Mr. Jenkins anticipates there will be no economic cost to persons who are required to comply with the proposed repeals during the first five years the repeals will be in effect. The proposed repeals should not affect local employment.

Small Business and Micro-business Impact Examination

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the proposed repeals. The proposed repeals do not require any changes in practice or any additional cost to a contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, expects the proposed repeal of these sections, if adopted, to benefit the public by removing obsolete language from HHSC's rule base.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Brian King in the HHSC Rate Analysis Department by telephone at (512) 491-1369. Written comments on the proposal may be submitted to Mr. King by fax at (512) 491-1998, by e-mail to brian.king@hhsc.state.tx.us or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200

within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §§355.451 - 355.453

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The repeals affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.451. *Definitions and General Reimbursement Information.*

§355.452. *Cost Reporting Procedures.*

§355.453. *Allowable and Unallowable Costs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §§355.703 - 355.706, 355.708, 355.709

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's

duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The repeals affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.703. *Basic Objectives and Criteria for Review of Cost Reports.*

§355.704. *Determination of Inflation Indices.*

§355.705. *Notification.*

§355.706. *Adjusting Reimbursement.*

§355.708. *Allowable and Unallowable Costs.*

§355.709. *Revenues.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201301380

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



CHAPTER 379. FAMILY VIOLENCE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §379.1, concerning definitions; §§379.101 - 379.104, 379.201 - 379.206, 379.301, 379.302, 379.401 - 379.404, 379.501, 379.502, 379.504, 379.508, 379.509, 379.602, 379.604 - 379.609, 379.612 - 379.619, 379.621, 379.623, 379.625 - 379.632, 379.634, 379.635, 379.702 - 379.711, and 379.714 - 379.718, concerning shelter centers; §§379.802, 379.803, 379.901 - 379.903, 379.1001, 379.1002, 379.1202, 379.1302, 379.1304 - 379.1307, 379.1309 - 379.1311, 379.1401 - 379.1405, 379.1407, and 379.1408, concerning special nonresidential projects; §§379.1501 - 379.1504, 379.1601 - 379.1605, 379.1701, 379.1702, 379.1801 - 379.1804, 379.1903, 379.2002, 379.2004 - 379.2008, 379.2010 - 379.2018, 379.2021 - 379.2030, 379.2032, 379.2033, and 379.2102 - 379.2108, concerning nonresidential centers.

HHSC proposes the repeal of §§379.207 and 379.405 - 379.407, concerning shelter centers; §§379.1101 - 379.1103 and 379.1312 - 379.1321, concerning special nonresidential projects; and §§379.1606, 379.1805, 379.1806, and 379.2109 - 379.2113, concerning nonresidential centers.

HHSC proposes new §§379.405 - 379.408, concerning shelter centers; §§379.1101 - 379.1105 and 379.1312 - 379.1323, concerning special nonresidential projects; and §§379.1805 - 379.1807 and 379.2109 - 379.2114, concerning nonresidential centers.

Background and Justification

The Family Violence Program promotes self-sufficiency, safety, and long-term independence from family violence for adult victims and their children. The program provides emergency shelter and support services, educates the public, and provides training and prevention support to various agencies. HHSC administers the program under the authority of Chapter 51 of the Texas Human Resources Code.

HHSC contracts with three types of local family violence centers and organizations to carry out its Family Violence Program: shelter centers, special nonresidential projects, and nonresidential centers. Over the course of monitoring contracts with these entities, HHSC has identified some areas where the rules governing the Family Violence Program need clarification, require updating to reflect current practices, or should be strengthened to improve HHSC's ability to monitor contract compliance. The amendments, repeals, and new sections are therefore proposed in part to meet these objectives.

This proposal also reflects changing trends and a heightened awareness of the importance of confidentiality in programs and services for victims of family violence. The amendments and new rules add requirements for board and staff training on confidentiality requirements, policies and procedures to address technology safety and data security, and confidential treatment of records and disposition of case files.

Further, the rules are proposed to update or add citations to federal or state law or regulation where needed to provide clear references to program authority and rule requirements.

Section-by-Section Summary

Throughout the proposed rules, the short name for the Health and Human Services Commission is changed from "the Commission" to "HHSC." Further, the rules require the entities governed by the rules to develop, maintain, and comply with their policies and procedures. Other technical corrections to terminology, grammar, and punctuation are proposed as well.

The proposed amendment to §379.1 moves the definition for "dating violence" into alphabetical order and updates the definition of "special nonresidential project."

Subchapter B governs shelter centers. The proposed amendments to §§379.101 - 379.104 clarify the requirements and responsibilities of a shelter center's board of directors, including the time frame for initial training. The proposed amendments to §§379.201 - 379.206 update requirements concerning contract standards, including the procedure for requesting a variance or waiver from contract requirements. The repeal of §379.207 is proposed so that its provisions could be clarified and incorporated into §379.205. The proposed amendments to §379.301 and §379.302 require bank statements to be reconciled to the general ledger bank accounts and update terminology. The proposed amendments to §§379.401 - 379.404 clarify rules governing personnel, including a requirement that new employee orientation include training on policies and laws governing confidentiality. Proposed new §379.405 governs requirements regarding staff development. The addition of new §379.405 requires that current §§379.405 - 379.407 be proposed for repeal. The provisions of §§379.405 - 379.407 are proposed as new §§379.406 - 379.408. The amendments to §§379.501, 379.502, 379.504, 379.508, and 379.509 clarify the rules governing facility safety and health requirements; §379.504 also requires a center's security policies and procedures to address technology safety and data security. The amendments

to §§379.602, 379.604 - 379.609, 379.612 - 379.619, 379.621, 379.623, 379.625 - 379.632, 379.634, and 379.635 clarify and update the rules governing program administration, including strengthening provisions to ensure the safety of a victim of family violence. The amendments to §§379.702 - 379.711 and 379.714 - 379.718 clarify and update rules governing service delivery. In response to client feedback about the orientation process, the amendments to §379.708 and §379.709 change the time frame within which orientation to a shelter center must take place from 16 hours to 24 hours after entering shelter and requires a wellness check for all family members to ensure that clients have an opportunity to express their needs.

Subchapter C governs special nonresidential projects. The proposed amendments to §§379.802, 379.803, 379.901 - 379.903, 379.1001, 379.1002, 379.1202, 379.1302, 379.1304 - 379.1307, 379.1309 - 379.1311, 379.1401 - 379.1405, 379.1407, and 379.1408 reflect similar changes made to the rules in Subchapter B. The repeals of §§379.1101 - 379.1103 are proposed so that new rules governing personnel files (§379.1102) and staff development (§379.1105) could be added. The provisions of the rules proposed for repeal--§§379.1101 - 379.1103--are proposed in new §§379.1101, 379.1103, and 379.1104, respectively. The amendment to §379.1310 deletes subsection (b) and moves the requirement for certain individuals to sign a confidentiality agreement to new §379.1312. The amendment to §379.1310 also deletes subsection (c) and moves the requirement for a contractor to provide training on confidentiality to proposed new §379.1313. The repeals of §§379.1312 - 379.1321 are proposed to make room for new §379.1312 and §379.1313; the provisions of the repealed rules are incorporated into new §§379.1314 - 379.1323.

Subchapter D governs nonresidential centers. The proposed amendments to §§379.1501 - 379.1504, 379.1601 - 379.1605, 379.1701, 379.1702, 379.1801 - 379.1804, 379.1903, 379.2002, 379.2004 - 379.2008, 379.2010 - 379.2018, 379.2021 - 379.2030, 379.2032, 379.2033, and 379.2102 - 379.2108; proposed new §§379.1805 - 379.1807 and 379.2109 - 379.2114; and the proposed repeals of §§379.1606, 379.1805, 379.1806, and 379.2109 - 379.2113 reflect similar changes made to the rules in Subchapters B and C.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendments, repeals, and new sections are in effect, the proposed amendments, repeals, and new sections have no foreseeable impact to costs or revenues of state or local governments.

Ms. Rymal does not anticipate that there will be an economic cost to persons who are required to comply with the proposed rules for the first five years the rules are in effect. There is no anticipated effect on employment in a local economy.

Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the providers to whom the proposed rules apply do not meet the definition of a small business or a micro-business. By law, a Family Violence Program service provider must be a public or private nonprofit organization.

Public Benefit

Stephanie Muth, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the

amendments, repeals, and new sections are in effect, the anticipated public benefit expected as a result of enforcing the amendments, repeals, and new sections is that the updated Family Violence Program rules will reflect current practices and that HHSC will have better tools to ensure that grants administered with public tax dollars are effectively monitored.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Ashley Behnke, Health and Human Services Commission, Family Violence Program, MC-2010, 909 West 45th Street, Austin, TX 78751 or by e-mail to ashley.behnke@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §379.1

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendment affects the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Civil justice system--A network of courts and legal processes that enforce, restore, or protect private and personal rights.

(2) Community education--The efforts or activities performed to increase public awareness about family violence and the availability of services for victims of family violence.

(3) Cooperation with criminal justice officials--Making efforts on behalf of victims of family violence to:

(A) establish ongoing working relationships with the local criminal justice system, including but not limited to law enforcement, prosecutors, the courts, and probation and parole departments; and

(B) educate the local criminal justice system about family violence and the need for policies that ensure safety for victims of family violence and hold batterers accountable.

(4) Cooperative living agreement--An agreement between the shelter and residents that promotes health, safety, and daily shelter operations.

(5) Criminal justice system--A network of court and legal processes that deals with the enforcement of criminal laws. A crime is an action or omission in violation of law and is an offense against the state.

(6) Crisis call hotline--A telephone number answered 24 hours a day, every day of the year by trained family violence center or special nonresidential project volunteers, employees, or Health and Human Services Commission (HHSC)-approved service contractors who provide victims of family violence with:

- (A) immediate intervention through safety planning;
- (B) understanding and support;
- (C) information about shelter center services; and
- (D) referrals to other services.

(7) Dating violence--An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is:

(A) intended to result in physical harm, bodily injury, assault, or sexual assault;

(B) a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault; or

(C) intended to inflict emotional harm, including an act of emotional abuse.

(8) [(7)] Education arrangements for children--Face-to-face services that result in a resident, nonresident, or program participant child complying with the compulsory attendance requirements found in the Texas Education Code. [It does not include transportation.]

(9) [(8)] Emergency medical care--Assistance in responding to any urgent medical situation for a resident, nonresident, program participant, or victim of family violence being considered for acceptance to or accessing family violence services.

(10) [(9)] Emergency transportation--Providing or arranging transportation:

(A) to and from emergency medical facilities for a resident, nonresident, program participant, or victim of family violence; or

(B) from a safe place to a shelter for victims of family violence needing shelter within the center's [centers] service area.

(11) [(10)] Family violence--An act by a member of a family or household against another member of the family or household that is:

(A) intended to result in physical harm, bodily injury, or assault;

(B) a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault, but does not include defensive measures to protect oneself; or

(C) intended to inflict emotional harm, including an act of emotional abuse.

(12) [(11)] Intervention services--Face-to-face services for a resident, nonresident, or program participant child or adult victim of family violence that:

(A) include:

- (i) safety planning;
- (ii) understanding and support;
- (iii) advocacy;
- (iv) case management;
- (v) information and education; and
- (vi) resource assistance;

(B) are available daily for shelter residents; and

(C) are available during the center's or project's hours of operation for nonresidents or program participants.

(13) [(12)] Legal assistance--Face-to-face services to the resident, nonresident, or program participant that include:

(A) identifying individual legal needs;

(B) explaining legal rights and options;

(C) providing support and accompaniment in the pursuit of those options;

(D) assisting in safety planning; and

(E) providing advocacy.

(14) [(13)] Limited English Proficiency (LEP)--A term describing individuals who do not speak English as their primary language and who have limited ability to read, speak, write or understand English.

(15) [(14)] Nonresident--An adult or child victim of family violence who receives services from an HHSC [a ~~Commission~~]-funded shelter center without receiving shelter.

(16) [(15)] Nonresidential center--An HHSC [A ~~Commission~~]-funded program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive nonresidential services to victims of family violence as described in the Service Delivery section of the HHSC [Commission] Family Violence Program Nonresidential Center Provider Manual.

(17) [(16)] Program participant--An adult or child victim of family violence who receives services from an HHSC [a ~~Commission~~]-funded nonresidential center or special nonresidential project.

(18) [(17)] Referral system to existing community services--An organized process for providing information and referring residents, nonresidents, or program participants to existing community resources, including but not limited to:

(A) medical care;

(B) legal representation;

(C) protective services for abuse of:

(i) children;

(ii) the elderly; and

(iii) people with disabilities;

(D) resource assistance;

- (E) public assistance;
- (F) counseling and treatment services;
- (G) children's services; and
- (H) other appropriate family violence services.

(19) [(48)] Resident--An adult or child victim of family violence who is admitted to an HHSC [a Commission]-funded shelter.

(20) [(49)] Satellite shelter--An additional shelter operated by a shelter center[-, located in a different city] that meets the criteria stated in these sections.

(21) [(20)] Shelter center--An HHSC [A Commission]-funded program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of family violence as described in the Service Delivery section of the HHSC [Commission] Family Violence Program Shelter Center Provider Manual.

(22) [(24)] Special nonresidential project--A project that:

(A) is operated by a public or private nonprofit organization; [and]

(B) provides at least one specialized family violence service [in addition to all required core services] as described in the Service Delivery section of the HHSC [Commission] Family Violence Special Nonresidential Project Provider Manual, which can be:[-]

(i) community education relating to family violence;

or

(ii) direct delivery of services for adult victims of family violence or their children;

(C) demonstrates a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;

(D) demonstrates that the project, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Human Resources Code, §51.0021; and

(E) demonstrates that the underserved or special population to be served by the project is involved in the project's design and implementation, if applicable.

(23) [(22)] Standards--The minimum HHSC [Commission] requirements as stated in this chapter.

(24) [(23)] Training and employment information--Providing information and referrals to residents, nonresidents, or program participants about employment training and employment opportunities, either directly or through formal arrangements with other organizations.

(25) [(24)] Twenty-four-hour-a-day shelter--An HHSC [A Commission]-funded shelter center facility that provides access, admittance, and temporary emergency residence for victims of family violence 24 hours a day, every day of the year.

(26) [(25)] Victim of family violence--Includes:

(A) an adult member of a family or household who is subjected to an act of family violence;

(B) a member of the household of the adult described in subparagraph (A) of this paragraph, other than the member of the

household who commits the act of family violence, including an act of emotional abuse;

(C) victims not directly served by an HHSC [a Commission] family violence provider;

(D) a member of the family or household who may have been subjected to sexual abuse by a batterer; and

(E) a victim of dating violence.

[(26) Dating violence--An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is:-]

[(A) intended to result in physical harm, bodily injury, assault, or sexual assault;]

[(B) a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault; or]

[(C) intended to inflict emotional harm, including an act of emotional abuse;-]

(27) Volunteer recruitment and training program--A process for soliciting a diverse group of people from the community to work as non-paid staff and providing them with information about family violence and services for victims of family violence through a structured orientation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



SUBCHAPTER B. SHELTER CENTERS DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.101 - 379.104

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.101. *Fiscal Oversight and Accountability.*

The board of directors of a shelter center must:

(1) Ensure that the center operates in a manner that keeps the organization's mission and purpose focused without becoming involved in day-to-day operations;

(2) Hire the center's executive director[-];

(3) As a whole, or as delegated to the center's finance committee, regularly review actual revenue and expenditures and compare them to [with] budgeted revenue and estimated costs;

(4) Review and approve programs and budgets; [and]

(5) Maintain and comply with current organizational by-laws; and

(6) [(5)] Review and approve policies for the organization's operation in accordance with the bylaws.

§379.102. *Shelter Center's Board Handbook.*

(a) The board members must be given a handbook that contains, at a minimum, the following:

(1) Board member job description;

(2) Current list of board members with current contact information [mailing addresses and telephone numbers];

(3) Organization's mission statement;

(4) Organization's bylaws and a copy of the letter granting 501(c)(3) status;

(5) List of all committees, including appointed board members and assigned staff;

(6) Committee descriptions;

(7) The organization policies;

(8) Organizational chart;

(9) History of the organization;

(10) List of program services and a brief description of each program;

(11) Current budget, including funding sources and sub-contractors;

(12) Brief description of contract provisions with attorneys, auditors, or other professionals;

(13) Basic information about family violence; and

(14) Brief history of the Texas Battered Women's Movement.

(b) The handbook may be in an electronic format.

§379.103. *Board of Directors ~~[Director's]~~ Training.*

(a) Every two years [At least once during their term of service], each board member must receive [training on] the following:

(1) An explanation of the center's mission, philosophy, and a brief history;

(2) An explanation of the dynamics of family violence that includes its causes and effects;

(3) A description of the organization's current programs, provided by program staff;

(4) A review of the organization's policies and clarification of any changes made during the year;

(5) An explanation of how the center is funded and future funding projections;

(6) A discussion, presented by the board chair or a member of the executive committee, of the following:

(A) The board's role and responsibilities related to legal and fiscal accountability;

(B) Meetings and attendance requirements;

(C) Committee duties, structure, and assignments; and

(D) Fund-raising and public relations responsibilities;

(7) An explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;

(8) An explanation of the working relationship between the board and staff, including, but not limited to which staff member is contacted regarding questions or requests and which staff members contact board members routinely; [and]

(9) An update on any changes made in the Business Organizations Code, Chapter 22; and [Texas Non-Profit Corporation Act.]

(10) The organization's confidentiality policy and the importance of confidentiality.

(b) New board members should receive this training within three months of starting their first term.

§379.104. *Confidentiality.*

Each board member must:

(1) Know and comply [Be familiar] with the Health and Human Services Commission's rules and the center's policies related to confidentiality; and

(2) Provide written assurance to the center that she or he will not use the position to obtain or access confidential resident or nonresident information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.201 - 379.206

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.201. *Special Nonresidential Project Contract.*

A [The] center may apply for a special nonresidential project contract; however, the proposed services cannot be the same as those required by [for] the shelter center contract.

§379.202. *Satellite Shelter Funding.*

In order to qualify for satellite shelter funding, the center must:

(1) Be ~~be~~ a current Health and Human Services Commission (HHSC) contractor in good standing;

(2) Develop, maintain, and comply with ~~develop and implement~~ written policies and procedures that describe the relationship between the center and the satellite shelter; and

(3) Ensure the satellite shelter meets all satellite shelter requirements in §379.203 of this chapter (relating to Satellite Shelter Requirements) ~~of the Satellite Shelter Requirements concerning §379.207 of this title (relating to More than One Funding Percentage Waiver)~~.

§379.203. *Satellite Shelter Requirements.*

A satellite shelter ~~The Satellite Shelter~~ must:

(1) Have a freestanding shelter building in which residents are sheltered;

(2) Serve nonresidents from the satellite service area;

(3) Either:

(A) Be in an area that prohibits resident and nonresident access to existing shelter center services because of difficulty or distance; or

(B) Provide services to an unserved or underserved population as demonstrated by its Family Violence Services Plan's consistency with Human Resources Code, §51.0021;

(4) Provide the same services as a 24-hour-a-day shelter;

~~[(5) Not be located in the same city as the center;]~~

(5) ~~[(6)]~~ Have ~~have~~ local community representation on the center's board of directors;

(6) ~~[(7)]~~ Have local funding and local volunteer support;

(7) ~~[(8)]~~ Have been operational ~~in operation~~ for at least one year preceding the fiscal year for which funding is requested;

(8) ~~[(9)]~~ Have housed residents in the past year; and

(9) ~~[(10)]~~ Have at least one employee or volunteer on-site continuously when residents are staying in the shelter ~~twenty-four hour, on-site staff or volunteer coverage if there are residents in the shelter~~.

§379.204. *Internal Monitoring System.*

A ~~The~~ center must develop, maintain, and comply with ~~have~~ a written internal monitoring system to evaluate:

(1) The quality of the center's required resident and non-resident services;

(2) The accuracy of the fiscal and programmatic documentation; and

(3) Compliance with the policies and procedures specified in the center's contract with the Health and Human Services Commission.

§379.205. *Funding Waivers.*

(a) The Health and Human Services Commission (HHSC) may waive the maximum prescribed funding ~~applicable~~ percentage, as described in Human Resources Code §51.003(a), when at least one [all] of the following occurs [conditions are met]:

(1) The [the] center's [anticipated] income for the contract year decreased [is expected to increase or decrease by more than 10%]

relative to the actual income received during the previous contract year. Decreases in funding caused by a center's noncompliance, negligence, or deficiencies will not be considered when making this calculation. [; and]

(2) The center's HHSC award for center services increases. [the change in the center's budget has resulted from:]

~~[(A) an increase in the state appropriation for center services; or]~~

~~[(B) a decrease in funding from other sources that cannot be attributed to a failure or deficiency on the center's part.]~~

(b) If a center receives three or more funding waivers in a five-year period, the center may be subject to corrective action.

§379.206. *Requesting a Variance or Waiver.*

(a) To request a waiver from the maximum prescribed funding percentage, a center's board ~~the center~~ must submit:

(1) ~~[submit] a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission (HHSC); [written request and appropriate documentation to the Commission state office demonstrating the center's efforts to raise funds compared to its budget; and]~~

(2) supporting documentation demonstrating the center's efforts to raise funds compared to its budget; and

(3) ~~[(2)]~~ a written agreement ~~agree in writing~~ to receive technical assistance as designated by HHSC [the Commission].

(b) To request a variance ~~to~~ or waiver from any other requirement in this subchapter, the center's board must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver [written request to the Commission on forms prescribed by the Commission and must document compelling reasons the requirement cannot be met].

(c) A center's board may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §379.207

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally

based and supported nonprofit services for victims of family violence throughout the state.

The repeal affects the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.207. *More than One Funding Percentage Waiver.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §379.301, §379.302

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.301. *Accounting System Requirements.*

A [~~The~~] center must maintain an accounting system and records that:

- (1) records revenue and expenditures using generally accepted accounting principles;
- (2) includes a chart of accounts that lists all accounts by an assigned number;
- (3) contains a general ledger and subsidiary ledgers;
- (4) maintains supporting documentation for all revenue and expenditures, including but not limited to:
 - (A) receipts or vouchers for revenue;
 - (B) bank statements reconciled to the general ledger bank accounts;
 - (C) canceled checks;
 - (D) deposit slips;
 - (E) approved invoices;
 - (F) receipts;
 - (G) leases;
 - (H) contracts;
 - (I) time sheets;
 - (J) inventory; and

(K) cost allocation worksheets;

(5) identifies all funding sources and expenditures by separate fund type; and

(6) uses a double-entry accounting system: either cash, accrual, or modified accrual.

§379.302. *Cash/Non-Cash Documentation* [~~In-kind Match~~].

A [~~The~~] center must develop, maintain, and comply with written internal policies and procedures to accurately document the non-Health and Human Services Commission (HHSC) cash/non-cash resources [~~in-kind match~~] required by HHSC under Human Resources Code, §51.003 [funding sources].

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DIVISION 4. PERSONNEL

1 TAC §§379.401 - 379.408

Statutory Authority

The amendments and new rules are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments and new rules affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.401. *Personnel Policies.*

A [~~The~~] center must develop, maintain, and comply with [~~have~~] written personnel policies, approved by the Board of Directors, and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook and must be notified of new or changed personnel policies. The handbook must address at a minimum the following:

- (1) Contract labor;
- (2) Conflict of interest;
- (3) Domestic violence in the workplace;
- (4) Nepotism;
- (5) Hiring process [~~Process~~] that is uniform for all candidates for a particular position and includes[-; but is not limited to]:
 - (A) Job posting;
 - (B) Job descriptions with essential job functions;

- (C) Interviewing systems; and
- (D) Reference checking and responding to reference checking;
- (6) Rules of conduct;
- (7) Hours and days of operation;
- (8) Employee benefits, including accrual of leave;
- (9) Employees' right to access their personnel files;
- (10) Written and oral employee orientation, initial training, and employee development;
- (11) Confidentiality requirements of employee records;
- (12) Employee evaluation;
- (13) Involuntary and voluntary termination; and
- (14) Grievances originating from current and former employees.

§379.402. Personnel Files.

A [The] center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) Employment application or resume;
- (2) Job descriptions;
- (3) Signed acknowledgment of confidentiality agreement;
- (4) Signed acknowledgment of receipt of personnel policies and procedures handbook;
- (5) Performance [All performance] evaluations for every year of employment in accordance with the center's personnel policies;
- (6) Documentation of orientation, initial training, and employee development;
- (7) Any status or classification change;
- (8) All disciplinary actions, if any; and
- (9) Letters of praise or criticism, if any.

§379.403. Drug and Alcohol Policy.

If under the jurisdiction of the Drug-Free Workplace Act, a [the] center must develop, maintain, and comply with a written drug and alcohol policy that includes [states] at least the following:

- (1) Prohibition of illegal [Hlegal] use or illegal possession of alcohol or drugs [is prohibited] while on duty;
- (2) A belief in a treatment and recovery approach;
- (3) A stated concern for employees and their recovery efforts;
- (4) Information on available programs [Programs] and systems for assistance; and
- (5) A statement of confidentiality.

§379.404. New Employee Orientation and Training.

- (a) A [The] center must provide an oral orientation about the organization for all new employees within the first two days of employment.
- (b) Within two weeks after [of] the first day of employment, all new employees must receive basic oral or written information regarding:
 - (1) Dynamics of family violence;

(2) A brief history of the Texas Battered Women's Movement; [and]

(3) A brief summary of current Texas laws that address family violence issues; and[-]

(4) Federal, state, and program requirements regarding confidentiality.

(c) Direct service employees and their supervisors must also receive training on the following:

- (1) Crisis intervention;
- (2) Hotline skills, if applicable;
- (3) Peer counseling techniques;
- (4) Risk assessment and[.] safety planning for victims of family violence;[- and]

(5) Legal [legal] options for victims of family violence;

(6) Economic options for victims of family violence;

(7) [(5)] The center's [centers'] policies and procedures, including all Health and Human Services Commission required policies and procedures;

(8) [(6)] Sensitivity to cultural diversity;

(9) [(7)] Applicable [Training on applicable] civil rights laws and regulations;

(10) [(8)] All required documentation and procedures [as] related to resident and nonresident issues; [and]

(11) [(9)] Confidentiality.

(d) Training described in subsections (b) and (c) of this section may be provided electronically.

§379.405. Staff Development.

(a) Direct service employees and their direct supervisors must receive relevant training or staff development on topics related to their job descriptions as family violence center employees.

(b) Direct service supervisors should receive training that is relevant to the job descriptions of the people they supervise.

(c) Training may be provided electronically.

§379.406. Children's Advocate.

A center must designate at least one staff person, either paid or volunteer, to act as a children's advocate.

§379.407. Legal Advocate.

A center must:

(1) designate at least one staff person, either paid or volunteer, to act as a legal advocate; and

(2) provide the legal advocate with access to relevant trainings to ensure that appropriate employees, volunteers, and interns have a working knowledge of current Texas laws pertaining to family violence, as well as the local justice system's response to family violence in each county where services are provided.

§379.408. Volunteer Coordinator.

A center must designate an employee or volunteer to act as the volunteer coordinator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §§379.405 - 379.407

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Statutory Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The repeals affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.405. *Children's Advocate.*

§379.406. *Legal Advocate.*

§379.407. *Volunteer Coordinator.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §§379.501, 379.502, 379.504, 379.508, 379.509

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.501. *Facility Requirements for the 24-Hour-a-Day Shelter Center.*

A [The] center facility must have:

- (1) a kitchen and eating area;
- (2) a group living area;
- (3) bathroom facilities, including toilets, lavatories, and bathing facilities;
- (4) sleeping facilities;
- (5) a private meeting area for individual and group services;
- (6) adequate safe space for children;
- (7) a safe indoor play space equipped with toys in good repair and arts and craft supplies;
- (8) a safe outdoor play area equipped with toys in good repair;
- (9) basic furnishings that are clean and in good repair, including:
 - (A) beds and bed linens;
 - (B) cribs;
 - (C) dining room tables;
 - (D) chairs;
 - (E) highchairs; and
 - (F) a place to store clothes, such as drawers or closets;
- (10) clearly marked exits; [and]

(11) safe, clearly marked locations to store cleansers, solvents, and other hazardous items out of reach of children; and

(12) [(+)] a first-aid kit in all center facilities that is accessible to employees, volunteers, and residents.

§379.502. *Preparing, Providing, and Serving Food to Residents.*

A [The] center must:

- (1) ensure food preparation, including storage of food, serving of food, and dining areas, is adequate and safe;
- (2) develop, maintain, and comply with [have] written policies and procedures to ensure residents are provided with at least three well-balanced meals or ingredients for well-balanced meals and an additional two snacks a day for children;
- (3) develop, maintain, and comply with [have] written policies and procedures that provide for alternative access to [essential] food and food preparation when the center's kitchen is closed;
- (4) develop, maintain, and comply with written policies and procedures that provide for alternative access to essential food and food preparation when the center's kitchen is inoperable;
- (5) [(4)] make reasonable, Americans with Disabilities Act-compliant [ADA compliant] dietary accommodations[;] for residents who require special medical diets, including those with food allergies [as specified by their health care provider];
- (6) [(5)] not require residents to use Supplemental Nutrition Assistance Program (SNAP) food benefits (formerly known as food stamps) to purchase shelter meals; [and]
- (7) [(6)] when providing meals or food items, consider the diverse needs of the population of the center's service area; and[;]

(8) make reasonable accommodations for the center and residents regarding personal food items.

§379.504. *Security Policies and Procedures.*

Centers and satellite shelters must develop, maintain, and comply with ~~[have]~~ written policies and procedures to promote the safety and security of residents, nonresidents, employees, and volunteers. These policies and procedures must address:

- (1) intruders on the property, such as a batterer;
- (2) assaults;
- (3) bomb threats;
- (4) threatening telephone calls;
- (5) power outages;
- (6) evacuations; ~~[and]~~
- (7) natural disasters (e.g., hurricanes, tornadoes, floods, fires); ~~and~~[-]
- (8) technology safety and data security.

§379.508. *Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day Shelter.*

(a) A ~~[The]~~ center may ~~[can]~~ request an exception to the allowable types of facilities for a 24-hour-a-day shelter by submitting a written waiver request that addresses the factors of safety and service delivery to the Health and Human Services Commission (HHSC), in accordance with §379.206 of this chapter (relating to Requesting a Variance or Waiver).

(b) A waiver will be granted if HHSC ~~[the Commission]~~ approves the request.

§379.509. *Additional Requirements if a Shelter Center Uses a Series of Safe Homes.*

If the center uses a series of safe homes for shelter, it must:

- (1) have a written policy that addresses in-depth screening of each home, including the suitability of the house and host family or individual; and
- (2) meet the same standards as a regular 24-hour-a-day shelter except:

(A) it is not required to have 24-hour employee or volunteer coverage; and

(B) any material the Health and Human Services Commission requires to be posted can instead be placed in a notebook that is clearly labeled and visibly available for residents to read.

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.602, 379.604 - 379.609, 379.612 - 379.619, 379.621, 379.623, 379.625 - 379.632, 379.634, 379.635

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.602. *Charging for Services.*

A ~~[The]~~ center cannot charge or solicit contributions or donations in return for Health and Human Services Commission-contracted services.

§379.604. *Federal and State Laws Regarding Eligibility.*

When determining eligibility for services, a ~~[the]~~ center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) Human Resources Code, Chapter 51;
- (2) Title VI of the Civil Rights Act of 1964 (Public Law 88 - 352);
- (3) Section 504 of the Rehabilitation Act of 1973 (Public Law 93 - 112);
- (4) Americans with Disabilities Act of 1990 (Public Law 101 - 336);
- (5) Age Discrimination Act of 1975 (42 U.S.C. §§6101 - 6107);
- (6) Health and Human Services Commission regulations regarding civil rights; ~~[and]~~
- (7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS; ~~and~~[-]
- (8) the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110).

§379.605. *Eligibility Criteria.*

A ~~[The]~~ center must develop, maintain, and comply with ~~[have]~~ written resident and nonresident eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

- (1) income;
- (2) whether the individual contributes, donates, or pays for these services;
- (3) gender; ~~[and]~~or
- (4) sexual orientation.

§379.606. *Denial of Services.*

A ~~[The]~~ center can deny services to an otherwise eligible victim of family violence only if it has written policies that outline specific behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of shelter staff and residents;

(2) apply equally to all people; ~~and~~

(3) comply with the laws and regulations described in §379.604 of this division (relating to Federal and State Laws Regarding Eligibility); and [this rule.]

(4) contain procedures that take into consideration the safety of a victim.

§379.607. Eligibility of Previously Involuntarily Terminated Residents or Nonresidents.

A [The] center must develop, maintain, and comply with [have] written policies and procedures to assess the safety and appropriateness of providing services to a victim whose services were [for taking into consideration the safety of a victim for whom services were] previously involuntarily terminated and who is currently requesting services.

§379.608. Access to Services for People with Limited English Proficiency.

A [The] center must:

(1) serve people with limited English proficiency and take reasonable steps to ensure [assure] meaningful access to the program; and

(2) develop, maintain, and comply with [have and follow] written policies and procedures for the access and delivery of services to people with limited English proficiency.

§379.609. Services at Capacity.

A [The] center must develop, maintain, and comply with [have and follow] written referral procedures for helping victims of family violence obtain other temporary shelter if the primary method of providing shelter is full.

§379.612. Termination of Services.

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures that:

(1) outline [the reasons and] behaviors that threaten the safety and security of shelter staff and residents for which services can be terminated;

(2) address how current and former residents and nonresidents can appeal terminations and file grievances with the center;

(3) apply equally to all people; and

(4) comply with the Americans with Disabilities Act, Title VI of the Civil Rights Act, §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable laws and regulations.

(b) When terminating services to the residents or nonresidents, whether voluntarily or involuntarily, [resident or nonresident] the center must make reasonable efforts to:

(1) assist the residents or nonresidents in re-evaluating their safety plans;

(2) assist in obtaining alternate resources for residents whose services are terminated;

(3) [4)] provide written notice to the residents or nonresidents [resident or nonresident] of the termination;

(4) [2)] provide written notice of the right to file a grievance with the center and the explanation of the center's grievance procedure; and

(5) [3)] upon request of the residents or nonresidents [resident or nonresident], provide contact information for the Health

and Human Services Commission Family Violence Program for complaint purposes.

§379.613. General Confidentiality Policy.

A [The] center must have [develop] a written general confidentiality policy that provides:

(1) that all information will be kept confidential, including all personal information and all communications, observations, and information made by and between or about adult and child residents and nonresidents, employees, volunteers, student interns, and board members;

(2) a statement about the importance of confidentiality in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program;

(3) the parameters of what must be held confidential and by whom, including internal communications between staff regarding clients;

(4) the limits of confidentiality under the law;

(5) a designation of custodian of the records; and

(6) procedures for:

(A) retention and destruction of records;

(B) responses to court orders;

(C) release of information;

(D) reports of abuse or suspected abuse of:

(i) children;

(ii) the elderly; and

(iii) people with disabilities;

(E) requests for [of] information under the Public Information Act;

(F) maintenance of records; and

(G) access to records that comply with confidentiality provisions in state and federal law.

§379.614. Confidentiality Information for Adult Residents and Nonresidents.

A [The] center must provide to adult residents and nonresidents, in writing, at least the following:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the resident's or nonresident's case files and records;

(4) an overview of the center's policy and practices on confidentiality;

(5) current state and federal laws regarding [confidentiality laws in Texas and] the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

- (A) children;
- (B) the elderly; and
- (C) people with disabilities;

(6) an overview of the center's policy for responding to court orders; ~~[and]~~

(7) an overview of the center's policy for requests for information under the Public Information Act;

(8) ~~[(7)]~~ an overview of the center's policy for release of information;

(9) ~~[(8)]~~ when the records will be decoded or destroyed; and

(10) ~~[(9)]~~ an overview of what kind of information will remain in the file once a resident or nonresident terminates services.

§379.615. Confidentiality Agreements.

A [The] center must have all employees, volunteers, board members, student interns, and adult residents and adult nonresidents [who participate in group intervention services] sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, resident, or nonresident leaves the center. The signed [These] agreements must be placed:

- (1) in the personnel files of the employees;
- (2) in [with] the corporate records of the board members;

and

(3) in the individual files of volunteers, student interns, residents, and nonresidents.

§379.616. Confidentiality Training.

A [The] center must provide training to employees, board members, volunteers who have access to personally identifying information, and interns; and direct service volunteers] on:

- (1) confidentiality policies and procedures;
- (2) the importance of confidentiality [why confidentiality is important] for victims of family violence; [and]
- (3) how information is recorded; and[-]
- (4) state and federal laws regarding confidentiality.

§379.617. Information in Resident or Nonresident Files.

A [The] center must limit the information kept in a resident's or a nonresident's files to information necessary for:

- (1) statistical and funding purposes;
- (2) establishing goals for intervention and advocacy;
- (3) documenting the need for and delivery of services; and
- (4) protecting the liability of the center and its employees, volunteers, and board members.

§379.618. Policies and Procedures Regarding Entries in a Resident or Nonresident File.

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures regarding entries into a resident or nonresident file that require that:

- (1) each entry must be attributed to [is signed] and dated by the employee or volunteer entering the information;
- (2) a resident or nonresident file must [does] not include the names of other residents or nonresidents; and

(3) if the center provides direct services for both the victim and the violent family member, the center must, at a minimum, maintain separate case records [are maintained] to promote victim safety and confidentiality.

(b) A [The] center must develop, maintain, and comply with [have] written policies and procedures to ensure a resident or nonresident has access to review all information in her or his case file.

(c) If a resident or nonresident contests a case file entry in her or his file, the center must either:

- (1) remove the entry from the file; or
- (2) if the entry is not removed, note in the case file that the resident or nonresident believes the entry to be inaccurate.

(d) A center may create and store entries to files electronically, provided that:

(1) electronic entries are secure and attributed to an individual, which may include password-protected system access; and

(2) records are kept in compliance with applicable state and federal laws, including the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110), and §§379.504, 379.619, and 379.625 of this subchapter (relating to Security Policies and Procedures; Maintaining Control over Resident and Nonresident Files; and Policies and Procedures for the Retention and Destruction of Documentation).

§379.619. Maintaining Control over Resident and Nonresident Files. A center must develop, maintain, and comply with written procedures that:

(1) outline the responsibilities of the [The] custodian of the records, designated by the center's executive director, [is responsible] for maintaining control over the resident and nonresident records, including the court's access to the records;[-]

(2) require resident [Resident] and nonresident records to [must] be kept secure and [must] not be removed from the center's premises without the written permission of the custodian of the records;[-]

(3) provide for the safekeeping of resident and nonresident records in the event of the center's closure; and

(4) allow residents and nonresidents to access their records in the event of the center's closure.

§379.621. Release of Resident or Nonresident Information Document.

The release of information document must include the following:

- (1) name of no more than one person or organization to which the information is being released;
- (2) specific information to be released;
- (3) beginning and ending dates the release is effective, not to exceed the resident's stay or [and not to exceed] the nonresident's active length of services;
- (4) date and the signatures of the resident or nonresident and the employee or volunteer; and
- (5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

§379.623. Procedures Regarding Court Orders.

A [The] center must develop, maintain, and comply with [have] written policies and procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

- (1) what to do when a process server arrives with a court order;
- (2) on whom court orders may be served, such as the custodian of the records;
- (3) which attorney(s) should be contacted;
- (4) who will discuss the subpoena and legal options with the resident or nonresident or other victim of family violence, and at what point; ~~and~~

(5) compliance with state and federal confidentiality provisions; and

(6) ~~[(5)]~~ the circumstances under which records may be released.

§379.625. Policies and Procedures for the Retention and Destruction of Documentation.

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to all residents and nonresidents, including but not limited to:

- (1) case notes, case content, and case files;
- (2) staff-to-staff communications; and
- (3) documentation required by other funders.

(b) Length of retention must be at least 3 years and 90 calendar days after the date of the last service.

§379.626. Disruption in Providing Services.

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be verbally reported immediately to the Health and Human Services Commission (HHSC).

(c) After the initial verbal ~~[oral]~~ notification, the center must submit to HHSC, within two weeks, [the Commission] a written description of the disruption and how services will be or were maintained.

§379.627. Maximum Length of Stay for Shelter Center Residents.

(a) The Health and Human Services Commission (HHSC) does not impose a maximum length of stay for a center resident.

(b) If a [the] center has [does have] a maximum length of stay, it must have a written policy explaining its necessity and the length of the maximum stay.

§379.628. Resident and Nonresident Rights.

A [The] center must:

(1) provide [give] written rights to all residents and nonresidents; ~~and~~

(2) make reasonable accommodations to provide written rights for residents and nonresidents with limited English proficiency; and

(3) ~~[(2)]~~ post resident and nonresident rights in a visible area within all center facilities.

§379.629. Resident's Belongings.

(a) A center [Shelter centers] must develop, maintain, and comply with [have] written policies and procedures regarding the security of residents' belongings.

(b) Residents must be informed in writing of:

(1) how long personal belongings will be stored if they leave the 24-hour-a-day shelter; and

(2) what will happen to their items if they do not pick them up by the deadline.

§379.630. Cooperation with Criminal Justice Officials.

A [The] center must develop and maintain a written plan that outlines efforts to cooperate with criminal justice officials in each county where services are provided, including:

(1) establishing an ongoing working relationship with local criminal justice officials;

(2) encouraging the justice system to develop policies and procedures that are responsive to the needs of victims of family violence and enhance collaboration among justice system agencies and service providers;

(3) pursuing opportunities to participate in the training of law enforcement officers and other criminal justice officials;

(4) providing information and education to law enforcement and criminal justice officials about the dynamics of family violence, services available, and support from the criminal justice system; and

(5) encouraging local criminal justice professionals to post signs and leave brochures in their offices about family violence and the availability of services.

§379.631. Community Education.

(a) A [The] center must have [a] written policies and procedures [policy] about community education that:

(1) ensure that [ensures] community education is provided to as many diverse groups as possible in each county where services are provided;

(2) focus [foeuses] part of the community education on informing victims of family violence of existing family violence services; and

(3) comply with §379.608 [§379.610] of this title (relating to Access to Services for People with Limited English Proficiency [24-Hour-A-Day Shelter Services to Family Violence Victims Less than 18 Years Old]).

(b) When providing community education, a [The] center must:

- (1) use presentations;
- (2) distribute written materials; and
- (3) establish and use media contacts.

§379.632. Volunteer Program.

A [The] center must develop, maintain, and comply with [have and follow] written policies and procedures regarding:

(1) recruitment methods that reach diverse groups of people from the communities of each county where services are provided; and

(2) screening, training, supervising, evaluating, and terminating volunteers[, including offering training for volunteers at least twice a year].

§379.634. Content of Training for Direct Service Volunteers.

A [Content of training for volunteers providing services to residents, nonresidents or other victims of family violence. The] center must

provide [develop] training for direct service volunteers [providing services to residents, nonresidents or other victims of family violence] that includes, but is not limited to:

- (1) A brief history of the Texas Battered Women's Movement;
- (2) The need for and benefit of shelter services;
- (3) The dynamics of family violence;
- (4) A brief summary of current Texas laws that address family violence issues;
- (5) Crisis intervention;
- (6) Hotline skills, if applicable;
- (7) Peer counseling techniques;
- (8) Risk assessment and safety planning;
- (9) The center's [center] policies and procedures;
- (10) The organization's mission and philosophy;
- (11) Confidentiality;
- (12) Legal options for victims of family violence;
- (13) Economic options for victims of family violence;
- (14) [(43)] Sensitivity to cultural diversity;
- (15) [(44)] Community resources;
- (16) [(45)] The need for community systems to be responsive to the needs of victims of family violence; and
- (17) [(46)] Applicable [Training on applicable] civil rights laws and regulations.

§379.635. *Content of Training for Non-Direct Service Volunteers.*

A [Content of training for volunteers not providing services to residents, nonresidents, or other victims of family violence. The] center must provide non-direct service volunteers [not providing services to residents, nonresidents or other victims of family violence] with:

- (1) a basic orientation of the duties they perform; [and]
- (2) the center's policies and procedures regarding confidentiality; and
- (3) [(2)] at a minimum, basic information about the organization's mission, philosophy, and policies.

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.702 - 379.711, 379.714 - 379.718

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.702. *Data Collection.*

(a) A [The] center must [will] regularly report complete and accurate data through the data collection system approved by the Health and Human Services Commission (HHSC), using service definitions in the Shelter Center Provider Manual. Data submission is due by the deadline specified in the contract. HHSC [The Commission] reserves the right to impose sanctions if complete and accurate data are not submitted on time.

(b) In the event that the center may not be able to provide services due to a natural disaster or fire, the affected center will consult with HHSC [the Commission] regarding whether exceptions to data reporting deadlines and data collection service definitions should be made.

(c) When collecting and reporting data, the center must comply with state and federal confidentiality provisions.

§379.703. *Promoting Cooperative Living in the Shelter.*

A [The] center must:

- (1) have a written cooperative living agreement that outlines what can be reasonably expected from the staff and residents, including the center's and residents' responsibilities; and
- (2) post this agreement in a visible area.[: and]
- [(3)] ~~hold house management meetings regularly.~~

§379.704. *Crisis Call Hotline.*

A [The] center must:

- (1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;
- (2) accept collect calls and anonymous incoming calls;
- (3) list the hotline number in all telephone directories [books] within the center's service area and on the center's website, if applicable;
- (4) provide a minimum of two hotline telephone lines;
- (5) ensure the caller has direct access to a live person who is trained to assess the person's safety and that a messaging system is not used to answer the hotline;
- (6) provide caller [Caller] ID blocks on the center's numbers for outgoing calls to residents, nonresidents, and other victims of family violence, which may only be unblocked with permission from the resident, nonresident, or victim of family violence;
- (7) ensure the screening process complies with all state and federal laws if the hotline is used to screen for eligibility for services;
- (8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, including victims of family violence with sensory and speech impairments;

(10) ensure the center is able to provide meaningful access to people with limited English proficiency; and

(11) if [H] the center uses caller ID or any other technology that establishes a record of calls on the hotline, the center must:

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) comply with the confidentiality requirements of §379.625 of this subchapter (relating to Policies and Procedures for the Retention and Destruction of Documentation) regarding [limit access to] the records generated by caller ID or other technology [these devices].

§379.705. Subcontracting the Crisis Call Hotline.

If a [the] center subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Health and Human Services Commission (HHSC) and must develop, maintain, and comply with [have] a written policy and procedure that addresses how the subcontractor meets HHSC's [the Commission's] training requirements for all direct service staff and will ensure immediate access to the center's 24-hour-a-day services.

§379.706. Medical Care.

A [The] center is not required to provide or pay for emergency medical care, but must:

(1) Maintain a current list of emergency medical care resources that can provide medical services for victims of family violence; and[-]

(2) Develop, maintain, and comply with [Have] written policies and procedures [procedure] about providing or arranging for emergency transportation to and from emergency medical facilities for shelter residents or victims of family violence being considered for acceptance as residents.

§379.707. Residents' Medications.

A [The] center must develop, maintain, and comply with [have a] written policies [policy] and procedures regarding all prescribed and non-prescribed medications used by residents, including but not limited to:

(1) self-administration of drugs and medications;

(2) methods for safekeeping of drugs and medications; [and]

(3) staff's role relating to safekeeping of drugs and medications; and

(4) [(3)] a system that ensures adult residents have direct or immediate access to their own and their children's medication.

§379.708. Resident's Orientation.

A [The] center must ensure that an orientation is provided to a resident orally and in writing within 24 [16] hours, is documented, and includes but is not limited to:

- (1) explanation of services available;
- (2) cooperative living agreement;
- (3) length of stay;
- (4) termination policy;
- (5) residents' rights;
- (6) nondiscrimination statement;

(7) grievance procedures;

(8) safety and security procedures, including medication;

(9) confidentiality and limits of confidentiality; [and]

(10) waivers of liability; and[-]

(11) a wellness check for all family members that addresses their immediate needs.

§379.709. Nonresident's Orientation.

A [The] center must ensure orientation is provided orally and in writing, is documented, and includes, but is not limited to:

- (1) explanation of services available;
- (2) termination policy;
- (3) nonresidents' [nonresident's] rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality; [and]
- (8) waivers of liability; and[-]

(9) a wellness check for all family members that addresses their immediate needs.

§379.710. Service Plan.

A [The] center must develop and periodically update a written individual service plan with each adult resident and adult nonresident that reflects the resident's or nonresident's self-identified [particular] needs.

§379.711. Group Intervention.

A [The] center must:

- (1) provide at least one weekly support group for adult residents and adult nonresidents; and
- (2) not mandate adult resident or adult [and] nonresident attendance at [to] weekly support groups.

§379.714. Intervention Services for Children Residing in the Shelter.

A [The] center must provide intervention services that are age-appropriate and include:

(1) procedures ensuring new child residents and/or parent residents have face-to-face contact with the designated children's staff and that this contact is documented;

(2) strategies to enhance safety, including safe use of technology;

(3) understanding and support, including:

(A) addressing needs identified by the victim; and

(B) building self-esteem, problem solving, and recognizing that the child is not responsible for the violence; and

(4) information about:

(A) [identifying] possible support systems;

(B) available resources; [and]

(C) confidentiality; and

(D) [(C)] dynamics of family violence.

§379.715. Safety Policies and Procedures for Delivering Services to Children.

(a) A [The] center must develop, maintain, and comply with [and endorse] written nonviolent disciplinary policies and procedures regarding child residents and child nonresidents, including policies and procedures for adult residents and adult nonresidents, employees, and volunteers who provide services to children.

(b) The center must develop, maintain, and comply with [have] written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children when employees or volunteers take children on outings.

§379.716. Texas Department of Family and Protective Services' (DFPS) Child Care Permit [Licensing].

A center that provides child care that is subject to DFPS regulation under 40 TAC Chapter 743 (relating to Minimum Standards for Shelter Care) must comply with the requirements of that chapter and any other relevant law, including relevant sections of Chapter 42, Human Resources Code and 40 TAC Chapter 745 (relating to Licensing).

§379.717. Legal Assistance Services.

A [The] center must:

- (1) maintain a current list of local legal entities including civil and criminal justice agencies and contact people in each county where services are provided;
- (2) offer support and accompaniment to residents and nonresidents in their pursuit of legal options;
- (3) ensure legal advocacy services are available and specific to the needs of victims of family violence; and
- (4) encourage the justice system to respond consistently to the needs of victims of family violence and to hold batterers accountable.

§379.718. Educational Services for Children of Adult Residents.

(a) A [The] center must inform an [the] adult resident about educational services for her or his child [children].

(b) At the resident's request, the center must:

- (1) help the resident make arrangements for the child's continued education;
- (2) accompany the resident to school meetings regarding the child's special needs; and
- (3) act as a liaison to the school regarding provisions in a protective order that may directly affect the child's safety.

(c) A [The] center must develop, maintain, and comply with [have] written policies and procedures regarding its educational services for children.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

DIVISION 1. BOARD OF DIRECTORS

1 TAC §379.802, §379.803

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.802. Notification Regarding Special Nonresidential Projects.

The executive director or designee must give the board of directors a description of the Health and Human Services Commission contract within three months of the contract award, including program, administrative, and fiscal oversight responsibilities.

§379.803. Confidentiality.

Each board member must:

(1) know and comply [be familiar] with the Health and Human Services Commission's rules and the contractor's policies related to confidentiality; and

(2) if the project provides direct services, provide written assurance to the contractor [project] that the board member [she or he] will not use the position to obtain or access confidential program participant information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.901 - 379.903

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.901. *Internal Monitoring System.*

A [The] contractor must develop, maintain, and comply with [have] a written internal monitoring system to evaluate the following:

- (1) the quality of the special project's services;
- (2) the accuracy of the fiscal and programmatic documentation; and
- (3) compliance with the policies and procedures specified in the contractor's contract with the Health and Human Services Commission.

§379.902. *Requesting a Variance or Waiver.*

(a) To request a variance [to] or waiver from a specific requirement in this subchapter, the contractor's board must submit a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission demonstrating the need for the variance or waiver [written request to the Commission on forms prescribed by the Commission and must document compelling reasons the requirement cannot be met].

(b) A contractor's board may submit a request for a variance or waiver up to 90 calendar days after the end of the contract year for which the variance or waiver is requested.

§379.903. *Primary Services to an Unserved or Underserved Population.*

If the special nonresidential project's purpose is to provide services to a particular population, the contractor [it] must have a plan for providing services to otherwise eligible victims who are not members of the targeted population. This plan may include referrals[; however, if an appropriate referral cannot be made, the contractor must provide the requested services].

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §379.1001, §379.1002

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1001. *Accounting System Requirements.*

The contractor must maintain an accounting system and records that:

- (1) records revenue and expenditures using generally accepted accounting principles;
- (2) includes a chart of accounts that lists all accounts by an assigned number;
- (3) contains a general ledger and subsidiary ledgers;
- (4) maintains supporting documentation for all revenue and expenditures, including, but not limited to:
 - (A) receipts or vouchers for revenue;
 - (B) bank statements reconciled to the general ledger bank accounts;
 - (C) canceled checks;
 - (D) deposit slips;
 - (E) approved invoices;
 - (F) receipts;
 - (G) leases;
 - (H) contracts;
 - (I) time sheets;
 - (J) inventory; and
 - (K) cost allocation worksheets;
- (5) identifies all funding sources and expenditures by separate fund type; and
- (6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

§379.1002. *Cash/Non-cash Resources Documentation [In-kind Match].*

A [The] contractor must develop, maintain, and comply with written internal policies and procedures to accurately document the cash/non-cash resources [in-kind match] required by funding sources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. PERSONNEL

1 TAC §§379.1101 - 379.1103

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of

HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The repeals affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1101. *Drug-Free Workplace Policy.*

§379.1102. *New Employee Orientation and Training.*

§379.1103. *Personnel Policies.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §§379.1101 - 379.1105

Statutory Authority

The new rules are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The new rules affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1101. *Personnel Policies.*

A contractor must develop, maintain, and comply with written personnel policies, approved by the Board of Directors, and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook and must be notified of new or changed personnel policies. The handbook must address at a minimum the following:

- (1) Contract labor;
- (2) Conflict of interest;
- (3) Domestic violence in the workplace;
- (4) Nepotism;
- (5) Hiring process that is uniform for all candidates for a particular position and includes:
 - (A) Job posting;
 - (B) Job descriptions with essential job functions;
 - (C) Interviewing systems; and
 - (D) Reference checking and responding to reference

checking;

(6) Rules of conduct;

(7) Hours and days of operation;

(8) Employee benefits, including accrual of leave;

(9) Employees' right to access their personnel files;

(10) Written and oral employee orientation, initial training, and employee development;

(11) Confidentiality requirements of employee records;

(12) Employee evaluation;

(13) Involuntary and voluntary termination; and

(14) Grievances originating from current and former employees.

§379.1102. *Personnel Files.*

A contractor must maintain a personnel file for each employee. Each file must include at least the following information:

(1) Employment application or resume;

(2) Job descriptions;

(3) Signed acknowledgement of confidentiality agreement;

(4) Signed acknowledgment of receipt of personnel policies and procedures handbook;

(5) Performance evaluations for every year of employment in accordance with the center's personnel policies;

(6) Documentation of orientation, initial training, and employee development;

(7) Any status or classification change;

(8) All disciplinary actions, if any; and

(9) Letters of praise or criticism, if any.

§379.1103. *Drug and Alcohol Policy.*

If under the jurisdiction of the Drug-Free Workplace Act, a contractor must develop, maintain, and comply with a written drug and alcohol policy that includes the following:

(1) prohibition of illegal use or illegal possession of alcohol or drugs while on duty;

(2) a belief in a treatment and recovery approach;

(3) a stated concern for employees and their recovery efforts;

(4) information on available programs and systems for assistance; and

(5) a statement of confidentiality.

§379.1104. *New Employee Orientation and Training.*

(a) A contractor must provide an oral orientation about the organization for all new employees within the first two days of employment.

(b) Within two weeks after the first day of employment, all new employees must receive basic oral or written information regarding:

(1) dynamics of family violence;

(2) a brief history of the Texas Battered Women's Movement;

(3) a brief summary of current Texas laws that address family violence issues; and

(4) federal, state, and program requirements regarding confidentiality.

(c) Direct service employees and their supervisors must also receive training on the following:

- (1) crisis intervention;
- (2) hotline skills, if applicable;
- (3) peer counseling techniques;
- (4) risk assessment and safety planning for victims of family violence;
- (5) legal options for victims of family violence;
- (6) economic options for victims of family violence;
- (7) the contractor's policies and procedures, including all Health and Human Services Commission required policies and procedures;
- (8) sensitivity to cultural diversity;
- (9) applicable civil rights laws and regulations;
- (10) all required documentation and procedures related to program participant issues; and
- (11) confidentiality.

(d) Training described in subsections (b) and (c) of this section may be provided electronically.

§379.1105. Staff Development.

(a) Direct service employees and their direct supervisors must receive relevant training or staff development on topics related to their job descriptions as family violence center employees.

(b) Direct service supervisors should receive training that is relevant to the job descriptions of the people they supervise.

(c) Training may be provided electronically.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §379.1202

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendment affects the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1202. Security System Policies and Procedures.

(a) A [The] contractor must develop, maintain, and comply with [have] written policies and procedures to promote the safety and security of program participants, employees, and volunteers as appropriate for the project. The written policies and procedures must address technology safety and data security.

(b) If the special nonresidential project provides direct services, the contractor must have a security system that is operational 24 hours a day. The security system may include, but is not limited to an alarm system, special lighting, dead bolts, and agreements with local law enforcement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.1302, 379.1304 - 379.1307, 379.1309 - 379.1323

Statutory Authority

The amendments and new rules are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments and new rules affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1302. Charging for Services.

A [The] contractor cannot charge or solicit contributions or donations in return for Health and Human Services Commission-contracted services.

§379.1304. Federal and State Laws Regarding Eligibility.

When determining eligibility for services for a special nonresidential project, the contractor must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) Human Resources Code, Chapter 51;
- (2) Title VI of the Civil Rights Act of 1964 (Public Law 88-352);
- (3) Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112);

(4) Americans with Disabilities Act of 1990 (Public Law 101-336);

(5) Age Discrimination Act of 1975 (42 U.S.C. [Sections] §§6101-6107);

(6) Health and Human Services Commission regulations regarding civil rights; [and]

(7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS; and[-]

(8) the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110).

§379.1305. *Eligibility Criteria.*

A [The] contractor must develop, maintain, and comply with [have] written program participant [client] eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

(1) income;

(2) whether the individual contributes, donates, or pays for these services; [and]

(3) gender; [and/]or

(4) sexual orientation.

§379.1306. *Denial of Services.*

A [The] contractor can deny services to an otherwise eligible victim of family violence only if it has written policies that outline specific reasons or behaviors that would make a victim ineligible. These policies must:

(1) address only behaviors that threaten the safety and security of staff and program participants;

(2) apply equally to all people; [and]

(3) comply with the laws and regulations described in §379.1304 of this chapter (relating to Federal and State Laws Regarding Eligibility); and [§379.1305 of this title (relating to Eligibility Criteria).]

(4) contain procedures that take into consideration the safety of a victim.

§379.1307. *Access to Services for People [Victims of Family Violence] with Limited English Proficiency.*

If a [the] contractor provides direct services for a special nonresidential project, the contractor must:

(1) serve people [victims of family violence] with limited English proficiency and take reasonable steps to ensure [assure] meaningful access to the program; and

(2) develop, maintain, and comply with [have] written policies and procedures for the access and delivery of services to people with limited English proficiency.

§379.1309. *Termination of Services.*

(a) A [The] contractor must develop, maintain, and comply with [have] written policies and procedures that:

(1) outline [the reasons and] behaviors that threaten the safety and security of staff and program participants for which services can be terminated;

(2) address how current and former program participants can appeal terminations and file grievances with the contractor;

(3) apply equally to all people; and

(4) comply with the Americans with Disabilities Act, Title VI of the Civil Rights Act, [Section] §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable [civil rights] laws and regulations.

(b) When terminating services to program participants, whether voluntarily or involuntarily, the contractor must make reasonable efforts to:

(1) assist the program participants in re-evaluating their safety plans;

(2) assist in obtaining alternate resources for program participants whose services are terminated;

(3) [(4)] provide written notice to the program participant of the termination;

(4) [(2)] provide written notice of the right to file a grievance with the contractor and the explanation of the contractor's grievance procedure; and

(5) upon request of the program participant, provide contact information for the Health and Human Services Commission's Family Violence Program for complaint purposes.

§379.1310. *General Confidentiality Policy.*

[(a)] A [The] contractor must have [develop] a written general confidentiality policy that:

(1) demonstrates that services will be delivered in a manner that ensures program participant confidentiality regarding records and information if the special nonresidential project provides direct services; [and]

(2) includes a statement about the importance of confidentiality in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program;[-]

(3) indicates the parameters of what must be held confidential and by whom, including internal communications to staff regarding clients; and

(4) the limits of confidentiality under the law.

[(b)] The contractor must have all employees, volunteers, board members, student interns, and adult program participants who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the project. These agreements must be placed:-]

[(1)] in the personnel files of the employees;]

[(2)] with the corporate records of the board members; and]

[(3)] in the individual files of volunteers, student interns, and program participants.-]

[(c)] The contractor must provide training to employees, board members, interns, and direct service volunteers on:-]

[(1)] confidentiality policies and procedures;]

~~{(2) why confidentiality is important for victims of family violence; and}~~

~~{(3) how information is recorded.}~~

§379.1311. Confidentiality Information for Program Participants.

If direct services are provided to adult program participants, the contractor must provide the program participants, in writing, ~~[these program participants with]~~ at least the following ~~[information regarding confidentiality in writing]:~~

- (1) the right to see their records;
- (2) the kind of information recorded, why, and the methods of collection;
- (3) who within the organization has access to the program participants' case files and records;
- (4) an overview of the contractor's ~~[organization's]~~ policy and practices on confidentiality;
- (5) current state and federal laws regarding ~~[confidentiality laws in Texas and]~~ the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:
 - (A) children;
 - (B) the elderly; and
 - (C) people with disabilities;
- (6) an overview of the contractor's policy for responding to court orders; ~~[and]~~
- (7) an overview of the contractor's policy for requests for information under the Public Information Act;
- (8) ~~[(7)]~~ [an overview of the contractor's policy for release of information;
- (9) ~~[(8)]~~ when the records will be decoded or destroyed; and
- (10) ~~[(9)]~~ an overview of what [kind of] information will remain in the file once a program participant terminates services.

§379.1312. Confidentiality Agreements.

A contractor must have all employees, volunteers, board members, student interns, and adult program participants sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the project. The signed agreements must be placed:

- (1) in the personnel files of the employees;
- (2) in the corporate records of the board members; and
- (3) in the individual files of volunteers, student interns, and program participants.

§379.1313. Confidentiality Training.

A contractor must provide training to employees, board members, volunteers who have access to personally identifying information, and interns on:

- (1) confidentiality policies and procedures;
- (2) the importance of confidentiality for victims of family violence;
- (3) how information is recorded; and

(4) state and federal laws regarding confidentiality.

§379.1314. Provision of Health and Human Services Commission (HHSC)-funded Services by Attorneys or Other Licensed Professionals.

If attorneys and other licensed professionals prohibited by Texas law or regulations to release program participant records to HHSC are allowed to provide HHSC-funded services, a contractor must submit an alternative method for verifying program participant services for HHSC's approval.

§379.1315. Information in Program Participant Files.

If a special nonresidential project provides direct services, a contractor must limit the information kept in a program participant's files to information necessary for:

- (1) statistical and funding purposes;
- (2) establishing goals for intervention and advocacy;
- (3) documenting the need for and delivery of services; and
- (4) protecting the liability of the contractor and its employees, volunteers, and board members.

§379.1316. Policies and Procedures Regarding Entries in a Program Participant's File.

(a) If a special nonresidential project involves direct services, a contractor must develop, maintain, and comply with written policies and procedures regarding entries into a program participant's file that require that:

- (1) each entry must be attributed to and dated by the employee or volunteer entering the information;
- (2) a program participant file must not include the names of other program participants; and

(3) if the contractor provides direct services for both the victim and the violent family member, the contractor must, at a minimum, maintain separate case records to promote victim safety and confidentiality.

(b) A contractor must develop, maintain, and comply with written policies and procedures to ensure a program participant has access to review all information in her or his case file.

(c) If a program participant contests a case file entry in her or his file, the contractor must either:

- (1) remove the entry from the file; or
- (2) if the entry is not removed, note in the case file that the program participant believes the entry to be inaccurate.

(d) A contractor may create and store entries to files electronically, provided that:

(1) electronic entries are secure and attributed to an individual, which may include password-protected system access; and

(2) records are kept in compliance with applicable state and federal laws, including the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110), and §§379.1202, 379.1317, and 379.1323 of this subchapter (relating to Security System Policies and Procedures; Maintaining Control over Program Participant Files; and Policies and Procedures for the Retention and Destruction of Documentation).

§379.1317. Maintaining Control over Program Participant Files.

A contractor must develop, maintain, and comply with written procedures that:

(1) outline the responsibilities of the custodian of the records, designated by the contractor's executive director, for maintaining control over the program participant records, including the court's access to the records;

(2) require program participant records to be kept secure and not be removed from the center's premises without the written permission of the custodian of the records;

(3) provide for the safekeeping of program participant records in the event of the contractor's closure; and

(4) allow a program participant to access her or his records in the event of the contractor's closure.

§379.1318. Release of Program Participant Information.

(a) A contractor may release information, orally or in writing, only if the contractor first obtains a written release of information from the program participant.

(b) Regardless of whether a written release of information from a program participant is obtained, the contractor must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

- (1) children;
- (2) the elderly; and
- (3) people with disabilities.

§379.1319. Release of Program Participant Information Document.
The release of information document must include the following:

- (1) name of no more than one person or organization to which the information is being released;
- (2) specific information to be released;
- (3) beginning and ending dates the release is effective, not to exceed the program participant's active length of services;
- (4) date and the signatures of the program participant and the employee or volunteer; and
- (5) right to revoke a release of information at any time.
This revocation request must be submitted in writing.

§379.1320. Court Orders.

Individuals (current or former employees, volunteers, board members, or student interns) who receive a court order regarding any program records, program participants, special nonresidential project activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§379.1321. Procedures Regarding Court Orders.

A contractor must develop, maintain, and comply with written policies and procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

- (1) what to do when a process server arrives with a court order;
- (2) on whom court orders may be served, such as the custodian of the records;
- (3) which attorney(s) should be contacted;
- (4) who will discuss the subpoena and legal options with the program participant or other victim of family violence, and at what point;
- (5) compliance with state and federal confidentiality provisions; and

(6) the circumstances under which records may be released.

§379.1322. Notification of Court Orders.

A contractor must attempt, whenever possible, to notify a program participant, hotline caller, or other victim of family violence when a court order affects the individual or the individual's records.

§379.1323. Policies and Procedures for the Retention and Destruction of Documentation.

(a) A contractor must develop, maintain, and comply with written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to all program participants, including:

- (1) case notes, case content, and case files;
- (2) staff-to-staff communications; and
- (3) documentation required by other funders.

(b) Length of retention must be at least 3 years and 90 calendar days after the date of the last service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragon

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1 TAC §§379.1312 - 379.1321

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The repeals affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1312. Provision of Commission-funded Services by Attorneys or Other Licensed Professionals.

§379.1313. Information in Program Participant Files.

§379.1314. Policies and Procedures Regarding Entries in a Program Participant's File.

§379.1315. Maintaining Control Over Program Participant Files.

§379.1316. Release of Program Participant Information.

§379.1317. Court Orders.

§379.1318. Procedures Regarding Court Orders.

§379.1319. *Notification of Court Orders.*

§379.1320. *Policies and Procedures for the Retention and Destruction of Documentation.*

§379.1321. *Telephone Access for Special Nonresidential Project Staff.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.1401 - 379.1405, 379.1407, 379.1408

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1401. *Special Nonresidential Project Services.*

A [~~The~~] contractor must [~~provide~~]:

(1) provide at least one specialized family violence service as described in the Service Delivery section of the Health and Human Services Commission's Family Violence Special Nonresidential Project Provider Manual, which can be [~~either~~]:

(A) community education relating to family violence;
or

(B) direct delivery of services for adult victims of family violence or their children;

(2) at a minimum, provide the following services to victims of family violence:

(A) safety planning;

(B) appropriate family violence information regarding hotlines;

(C) information about the victim's legal rights and options, and referral to legal resources; and

(D) information about the dynamics of family violence;

(3) provide information about and referral to existing community resources;

(4) provide understanding and support to [~~of~~] victims;

(5) if providing direct services, including advocacy[; ~~including~~]:

(A) explain [~~explaining~~] the program participant's rights;

(B) assist [~~assisting~~] the program participant to make choices about those rights; and

(C) assist [~~assisting~~] the program participant to access the services to which she or he is entitled[;]

(6) demonstrate a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging.

§379.1402. *Data Collection.*

(a) A [~~The~~] contractor must [~~will~~] regularly report complete and accurate data through the data collection system approved by the Health and Human Services Commission (HHSC), using service definitions in the Special Nonresidential Project Provider Manual. Data submission is due by the deadline specified in the contract. HHSC [~~The Commission~~] reserves the right to impose sanctions if complete and accurate data are not submitted on time.

(b) In the event that the contractor may not be able to provide services due to a natural disaster or fire, the affected contractor will consult with HHSC [~~the Commission~~] regarding whether exceptions to data reporting deadlines and data collection service definitions [~~definition~~] should be made.

(c) When collecting and reporting data, the contractor must comply with state and federal confidentiality provisions.

§379.1403. *Crisis Call Hotline.*

A [~~The~~] contractor does not have to provide a crisis call hotline, but if the contractor does provide a hotline and it is funded by the Health and Human Services Commission (HHSC), the contractor must:

(1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number in all telephone directories [~~books~~] within the contractor's service area and on the contractor's website, if applicable;

(4) provide a minimum of two hotline telephone lines;

(5) ensure the caller has direct access to a live person who is trained to assess the person's safety and that a messaging system is not used to answer the hotline;

(6) provide caller [~~Caller~~] ID blocks on the contractor's numbers for outgoing calls to program participants [~~clients~~] and other victims of family violence, which may only be unblocked with permission from the program participant [~~client~~] or victim of family violence;

(7) ensure the screening process complies with all state and federal laws [~~law~~] if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, including victims of family violence with sensory and speech impairments;

(10) ensure the contractor is able to provide meaningful access to people with limited English proficiency[;] and[;]

(11) if the contractor uses caller [Caller] ID or any other technology that establishes a record of calls on the hotline, the contractor must:

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) comply with the confidentiality requirements of §379.1323 of this subchapter (relating to Policies and Procedures for the Retention and Destruction of Documentation) regarding [limit access to] the records generated by caller ID or other technology [these devices].

§379.1404. Subcontracting the Crisis Call Hotline.

If a ~~the~~ contractor subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Health and Human Services Commission (HHSC) and must develop, maintain, and comply with [have] a written policy and procedure that addresses how the subcontractor ~~contractor~~ meets HHSC's ~~the Commission's~~ training requirements for all direct service staff and will ensure immediate access to the contractor's services.

§379.1405. Program Participant's Orientation.

If a ~~the~~ contractor provides direct services, the contractor must ensure that an orientation is provided to a program participant orally and in writing, is documented, and includes, but is not limited to:

- (1) explanation of services available;
- (2) termination policy;
- (3) program participants' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality; ~~and~~
- (8) waivers of liability; ~~and~~[-]

(9) a wellness check for the program participant that addresses immediate needs.

§379.1407. Safety Policies and Procedures if Providing Services to Children.

(a) A [The] contractor must develop, maintain, and comply with [and endorse] written nonviolent disciplinary policies and procedures regarding child program participants, including policies and procedures for adult [for] program participants, [and for] employees, and volunteers who provide services to children.

(b) A contractor [The project] must develop, maintain, and comply with [have] written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children when [if] employees or volunteers take children on outings.

§379.1408. Texas Department of Family and Protective Services' (DFPS) Child Care Licensing Permit [Regulations].

A contractor that provides child care that is subject to DFPS regulation under 40 TAC Chapter 743 (relating to Minimum Standards for Shelter Care) must comply with the requirements of that chapter and any other relevant law, including relevant sections of Chapter 42, Human Resources Code and 40 TAC Chapter 745 (relating to Licensing). [If the contractor is subject to DFPS child care licensing regulations, the contractor must have written policies and procedures to ensure compliance with those rules and regulations.]

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SUBCHAPTER D. NONRESIDENTIAL CENTERS

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.1501 - 379.1504

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1501. Fiscal Oversight and Accountability.

The board of directors of a nonresidential center must:

(1) ensure that the center is operating in a manner that keeps the organization's mission and purpose focused, without becoming involved in day-to-day operations;

(2) hire the center's executive director;

(3) as a whole, or as delegated to the center's finance committee, regularly review actual revenue and expenditures and compare them to budgeted revenue and estimated costs;

(4) review and approve programs and budgets; ~~and~~

(5) maintain and comply with current organizational by-laws; and

(6) ~~[(5)]~~ review and approve board policies for the organization's operation in accordance with the bylaws.

§379.1502. Nonresidential Center's Board Handbook.

(a) The board members must be given a handbook that contains, at a minimum, the following:

(1) board member job description;

(2) current list of board members with current contact information ~~[mailing addresses and telephone numbers];~~

(3) organization's mission statement;

(4) organization's bylaws and a copy of the letter granting 501(c)(3) status;

(5) list of all committees, including appointed board members and assigned staff;

- (6) committee descriptions;
- (7) ~~[policies of]~~ the organization policies;
- (8) organizational chart;
- (9) history of the organization;
- (10) list of program services and a brief description of each program;
- (11) current budget, including funding sources and subcontractors;
- (12) brief description of contract provisions with attorneys, auditors, or other professionals;
- (13) basic information about family violence; and
- (14) brief history of the Texas Battered Women's Movement.

(b) The handbook may be in an electronic format.

§379.1503. *Board of Directors [Director's] Training.*

(a) Every two years [At least once during their term of service], each board member must receive [training on] the following:

- (1) an explanation of the center's mission, philosophy, and a brief history;
- (2) an explanation of the dynamics of family violence that includes its causes and effects;
- (3) a description of the organization's current programs, provided by program staff;
- (4) a review of the organization's policies and clarification of any changes made during the year;
- (5) an explanation of how the center is funded and future funding projections;
- (6) a discussion, presented by the board chair or a member of the executive committee, of the following:
 - (A) the board's role and responsibilities related to legal and fiscal accountability;
 - (B) meetings and attendance requirements;
 - (C) committee duties, structure, and assignments; and
 - (D) fund-raising [fundraising] and public relations responsibilities[;-]
- (7) an explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;
- (8) an explanation of the working relationship between the board and staff, including but not limited to which staff member is contacted regarding questions or requests and which staff members contact board members routinely; [and]
- (9) an update on any changes made in the Business Organizations Code, Chapter 22; and [Texas Non-Profit Corporation Act.]
- (10) the organization's confidentiality policy and the importance of confidentiality.

(b) New board members should receive this training within three months of starting their first term.

§379.1504. *Confidentiality.*

Each board member must:

(1) know and comply [be familiar] with the Health and Human Services Commission's rules and the center's policies related to confidentiality; and

(2) provide written assurance to the center that she or he will not use the position to obtain or access confidential program participant information.

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.1601 - 379.1605

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1601. *Primary Services to an Unserved or Underserved Population.*

If a [the] center's purpose is to provide services to a particular population, it must have a plan for providing services to otherwise eligible victims who are not members of the targeted population. This plan may include referrals[; however, if an appropriate referral cannot be made, the center must provide the requested services].

§379.1602. *Special Nonresidential Project Contract.*

A [The] center may apply for a special nonresidential project contract; however, the proposed services cannot be the same as those required by [for] the nonresidential center contract.

§379.1603. *Internal Monitoring System.*

A [The] center must develop, maintain, and comply with [have] a written internal monitoring system to evaluate:

- (1) quality of the center's required program participant services;
- (2) accuracy of the fiscal and programmatic documentation; and[;-]
- (3) compliance with the policies and procedures specified in the center's contract with the Health and Human Services Commission.

§379.1604. *Funding Waivers.*

(a) The Health and Human Services Commission (HHSC) may waive the maximum prescribed funding [applicable] percentage,

as described in Human Resources Code §51.003(a), when at least one [all] of the following occurs [conditions are met]:

(1) The center's income for the contract year decreased relative to the actual income received during the previous contract year. Decreases in funding caused by a center's noncompliance, negligence, or deficiencies will not be considered when making this calculation. [the center's anticipated income for the contract year is expected to increase or decrease by more than 10% relative to the actual income received during the previous contract year;]

(2) The center's HHSC award for center services increases. [the change in the center's budget has resulted from:]

[(A) an increase in the state appropriation for center services; or]

[(B) a decrease in funding from other sources that cannot be attributed to a failure or deficiency on the center's part.]

(b) If a center receives three or more funding waivers in a five-year period, the center may be subject to corrective action.

§379.1605. *Requesting a Variance or Waiver.*

(a) To request a waiver from the maximum prescribed funding percentage, the center's board [center] must submit:

(1) [submit] a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission (HHSC); [written request and appropriate documentation to the Commission demonstrating the center's efforts to raise funds compared to its budget; and]

(2) supporting documentation demonstrating the center's efforts to raise funds compared to its budget; and

(3) [(2)] a written agreement [agree in writing] to receive technical assistance as designated by HHSC [the Commission].

(b) To request a variance [to] or waiver from any other requirement in this subchapter, the center's board must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver [written request to the Commission on forms prescribed by and must document compelling reasons the requirement cannot be met].

(c) A center's board may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §379.1606

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Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The repeal affects the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1606. *More than one Funding Percentage Waiver.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §379.1701, §379.1702

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1701. *Accounting System Requirements.*

A [The] center must maintain an accounting system and records that:

(1) records revenue and expenditures using generally accepted accounting principles;

(2) includes a chart of accounts that lists all accounts by an assigned number;

(3) contains a general ledger and subsidiary ledgers;

(4) maintains supporting documentation for all revenue and expenditures, including, but not limited to:

(A) receipts or vouchers for revenue;

(B) bank statements reconciled to the general ledger bank accounts;

(C) canceled checks;

(D) deposit slips;

(E) approved invoices;

(F) receipts;

(G) leases;

- (H) contracts;
- (I) time sheets;
- (J) inventory; and
- (K) cost allocation worksheets.

(5) identifies all funding sources and expenditures by separate fund type; and

(6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

§379.1702. *Cash/Non-Cash Resources Documentation* [~~In-Kind Match~~].

A [The] center must develop, maintain, and comply with written internal policies and procedures to accurately document the non-Health and Human Services Commission (HHSC) cash/non-cash resources [~~in-kind match received as~~] required by HHSC under Human Resources Code, §51.003 [~~funding sources~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. PERSONNEL

1 TAC §§379.1801 - 379.1807

Statutory Authority

The amendments and new rules are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments and new rules affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1801. *Personnel Policies.*

A [The] center must develop, maintain, and comply with [have] written personnel policies, approved by the Board of Directors, and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook and must be notified of new or changed personnel policies. The handbook must address at a minimum the following:

- (1) contract labor;
- (2) conflict of interest;
- (3) domestic violence in the workplace;
- (4) nepotism;

(5) hiring process that is uniform for all candidates for a particular position and includes[, but is not limited to]:

- (A) job posting;
- (B) job descriptions with essential job functions;
- (C) interviewing systems; and
- (D) reference checking and responding to reference checking;[-]
- (6) rules of conduct;
- (7) hours and days of operation;
- (8) employee benefits, including accrual of leave;
- (9) employees' right to access their personnel files;
- (10) written and oral employee orientation, initial training, and employee development;
- (11) confidentiality requirements of employee records;
- (12) employee evaluation;
- (13) involuntary and voluntary termination; and
- (14) grievances originating from current and former employees.

§379.1802. *Personnel Files.*

A [The] center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) employment application or resume;
- (2) job descriptions;
- (3) signed acknowledgment of confidentiality agreement;
- (4) signed acknowledgment of receipt of personnel policies and procedures handbook;
- (5) [all] performance evaluations for every year of employment in accordance with the center's personnel policies;
- (6) documentation of orientation, initial training, and employee development;
- (7) any status or classification change;
- (8) all disciplinary actions, if any; and
- (9) letters of praise or criticism, if any.

§379.1803. *Drug and Alcohol Policy.*

If under the jurisdiction of the Drug-Free Workplace Act, a [the] center must develop, maintain, and comply with a written drug and alcohol policy that includes [states] at least the following:

- (1) prohibition of illegal use or illegal possession of alcohol or drugs [is prohibited] while on duty;
- (2) a belief in a treatment and recovery approach;
- (3) a stated concern for employees and their recovery efforts;
- (4) information on available programs and systems for assistance; and
- (5) a statement of confidentiality.

§379.1804. *New Employee Orientation and Training.*

(a) A [The] center must provide an oral orientation about the organization for all new employees within the first two days of employment.

(b) Within two weeks ~~after~~ [of] the first day of employment, all new employees must receive basic oral or written information regarding:

- (1) dynamics of family violence;
- (2) a brief history of the Texas Battered Women's Movement; ~~and~~
- (3) a brief summary of current Texas laws that address family violence issues; ~~and~~[-]

(4) federal, state, and program requirements regarding confidentiality.

(c) Direct service employees and their supervisors must also receive training on the following:

- (1) crisis intervention;
- (2) hotline skills, if applicable;
- (3) peer counseling techniques;
- (4) risk assessment ~~and~~[-] safety planning for victims of family violence;[-] ~~and~~
- (5) legal options for victims of family violence;
- (6) economic options for victims of family violence;
- (7) ~~[(5)]~~ the center's ~~[center]~~ policies and procedures, including all Health and Human Services Commission required policies and procedures;
- (8) sensitivity to cultural diversity;
- (9) ~~[(6)]~~ applicable civil rights laws and regulations;
- (10) ~~[(7)]~~ all required documentation and procedures ~~[as]~~ related to program participant issues; and
- (11) ~~[(8)]~~ confidentiality.

(d) Training described in subsections (b) and (c) of this section may be provided electronically.

§379.1805. Staff Development.

(a) Direct service employees and their direct supervisors must receive relevant training or staff development on topics related to their job descriptions as family violence center employees.

(b) Direct service supervisors should receive training that is relevant to the job descriptions of the people they supervise.

(c) Training may be provided electronically.

§379.1806. Legal Advocate.

A center must:

- (1) designate at least one staff person, either paid or volunteer, to act as a legal advocate; and
- (2) provide the legal advocate with access to relevant trainings to ensure that appropriate employees, volunteers, and interns have a working knowledge of current Texas laws pertaining to family violence, as well as the local justice system's response to family violence in each county where services are provided.

§379.1807. Volunteer Coordinator.

A center must designate an employee or volunteer to act as the volunteer coordinator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §379.1805, §379.1806

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The repeals affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1805. Legal Advocate.

§379.1806. Volunteer Coordinator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §379.1903

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendment affects the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.1903. Security Policies and Procedures.

A [The] center must develop, maintain, and comply with [have] written policies and procedures to promote the safety and security of program participants, employees, and volunteers. These policies and procedures must address:

- (1) an intruder on the property, such as a batterer;
- (2) assaults;
- (3) bomb threats;
- (4) threatening telephone calls;
- (5) natural disasters (e.g., hurricanes, tornadoes, floods, fires);
- (6) evacuations; [and]
- (7) power outages; and[-]
- (8) technology safety and data security.

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.2002, 379.2004 - 379.2008, 379.2010 - 379.2018, 379.2021 - 379.2030, 379.2032, 379.2033

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.2002. Charging for Services.

A [The] center cannot charge or solicit contributions or donations in return for Health and Human Services Commission-contracted services.

§379.2004. Federal and State Laws Regarding Eligibility.

When determining eligibility for services, a [the] center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) Human Resources Code, Chapter 51;
- (2) Title VI of the Civil Rights Act of 1964 (Public Law 88-352);
- (3) Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112);

(4) Americans with Disabilities Act of 1990 (Public Law 101-336);

(5) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);

(6) Health and Human Services Commission regulations regarding civil rights; [and]

(7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS; and[-]

(8) the Family Violence Prevention Services Act (42 U.S.C. Chapter 110).

§379.2005. Eligibility Criteria.

A [The] center must develop, maintain, and comply with [have] written program participant eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

- (1) income;
- (2) whether the individual contributes, donates, or pays for these services; [and]
- (3) gender; [and/or]
- (4) sexual orientation.

§379.2006. Denial of Services.

A [The] center can deny services to an otherwise eligible victim of family violence only if it has written policies that outline specific behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of [shelter] staff and program participants [residents];
- (2) apply equally to all people; [and]
- (3) comply with the laws and regulations described in §379.2004 of this division (relating to Federal and State Laws Regarding Eligibility); and [§379.2005-]

(4) contain procedures that take into consideration the safety of the victim.

§379.2007. Eligibility of Previously Involuntarily Terminated Program Participants.

A [The] center must develop, maintain, and comply with [have] written policies and procedures to assess [for taking into consideration] the safety and appropriateness of providing services to [of] a victim whose [for whom] services were previously involuntarily terminated and who is currently requesting services.

§379.2008. Access to Services for People with Limited English Proficiency.

A [The] center must:

(1) serve people [victims of family violence] with limited English proficiency and take reasonable steps to ensure [assure] meaningful access to the program; and

(2) develop, maintain, and comply with [have] written policies and procedures for the access and delivery of services to people with limited English proficiency.

§379.2010. Termination of Services.

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures that:

(1) outline [the reasons and] behaviors that threaten the safety and security of staff and program participants for which services can be terminated;

(2) address how current and former program participants can appeal terminations and file grievances with the center;

(3) apply equally to all people; and

(4) comply with the Americans with Disabilities Act, Title VI of the Civil Rights Act, [Section] §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable laws and regulations.

(b) When terminating services to program participants, whether voluntarily or involuntarily, the center must make reasonable efforts to:

(1) assist the program participant in re-evaluating their safety plans;

(2) assist in obtaining alternate resources for program participants whose services are terminated;

(3) [(4)] provide written notice to the program participant of the termination;

(4) [(2)] provide written notice of the right to file a grievance with the center and the explanation of the center's grievance procedure; and

(5) [(3)] upon request of the program participant, provide contact information to the program participant for the Health and Human Services Commission Family Violence Program for complaint purposes.

§379.2011. *General Confidentiality Policy.*

A [The] center must have [develop] a written general confidentiality policy that provides:

(1) that all information will be kept confidential, including all personal information and all communications, observations, and information made by and between or about adult and child program participants, employees, volunteers, student interns, and board members;

(2) a statement about the importance of confidentiality in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program;

(3) the parameters of what must be held confidential and by whom, including internal communications between staff regarding clients;

(4) the limits of confidentiality under the law;

(5) a designation of custodian of the records;

(6) procedures for:

(A) retention and destruction of records;

(B) responses to court orders;

(C) release of information;

(D) reports of abuse or suspected abuse of:

(i) children;

(ii) the elderly; and

(iii) people with disabilities;[-]

(7) requests for [of] information under the Public Information Act;

(8) maintenance of records; and

(9) access to records that comply with confidentiality provisions in state and federal law.

§379.2012. *Confidentiality Information for Adult Program Participants.*

A [The] center must provide to adult program participants, in writing, at least the following:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the program participants' case files and records;

(4) an overview of the center's policy and practices on confidentiality;

(5) current state and federal laws regarding [confidentiality laws in Texas and] the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

(A) children;

(B) the elderly; and

(C) people with disabilities;

(6) an overview of the center's policy for responding to court orders; [and]

(7) an overview of the center's policy for requests for information under the Public Information Act;

(8) [(7)] an overview of the center's policy for release of information;

(9) [(8)] when the records will be decoded or destroyed; and

(10) [(9)] an overview of what kind of information will remain in the file once a program participant terminates services.

§379.2013. *Confidentiality Agreements.*

A [The] center must have all employees, volunteers, board members, student interns, and adult program participants [who participate in group intervention services] sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the center. The signed [These] agreements must be placed:

(1) in the personnel files of the employees;

(2) in [with] the corporate records of the board members; and

(3) in the individual files of volunteers, student interns, and program participants.

§379.2014. *Confidentiality Training.*

A [The] center must provide training to employees, board members, volunteers who have access to personally identifying information, and interns[, and direct service volunteers] on:

(1) confidentiality policies and procedures;

(2) the importance of confidentiality [why confidentiality is important] for victims of family violence; [and]

- (3) how information is recorded; and[.]
- (4) state and federal laws regarding confidentiality.

§379.2015. *Information in Program Participant Files.*

A [The] center must limit the information kept in a program participant's files to information necessary for:

- (1) statistical and funding purposes;
- (2) establishing goals for intervention and advocacy;
- (3) documenting the need for and delivery of services; and
- (4) protecting the liability of the center and its employees, volunteers, and board members.

§379.2016. *Policies and Procedures Regarding Entries in a Program Participant's File [Files].*

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures regarding entries into a program participant's [participant] file that require that [ensure]:

(1) each entry must be attributed to [is signed] and dated by the employee or volunteer entering the information;

(2) a program participant file must [does] not include the names of other program participants; and

(3) if the center provides direct services for both the victim and the violent family member, the center must, at a minimum, maintain separate case records [are maintained] to promote victim safety and confidentiality.

(b) A [The] center must develop, maintain, and comply with [have] written policies and procedures to ensure a program participant has access to review all information in her or his case file.

(c) If a program participant contests a case file entry in her or his file, the center must either:

- (1) remove the entry from the file; or
- (2) note in the case file, if the entry is not removed, that the program participant believes the entry to be inaccurate.

(d) A center may create and store entries to files electronically, provided that:

(1) electronic entries are secure and attributed to an individual, which may include password-protected system access; and

(2) records are kept in compliance with applicable state and federal laws, including the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110), and §§379.1903, 379.2017, and 379.2023 of this subchapter (relating to Security Policies and Procedures; Maintaining Control over Program Participant Files; and Policies and Procedures for the Retention and Destruction of Documentation).

§379.2017. *Maintaining Control over [Over] Program Participant Files.*

A center must develop maintain, and comply with written procedures that:

(1) outline the responsibilities of the [The] custodian of the records, designated by the center's executive director, [is responsible] for maintaining control over the program participant records, including the court's access to the records;[.]

(2) require program [Program] participant records to [must] be kept secure and [must] not be removed from the center's premises without the written permission of the custodian of the records;[.]

(3) provide for the safekeeping of program participant records in the event of the center's closure; and

(4) allow a program participant to access her or his records in the event of the center's closure.

§379.2018. *Release of Program Participant Information.*

(a) A [The] center may release information, orally or in writing, only if it first obtains a written release of information from the program participant.

(b) Regardless of whether a written release of information from a program participant is obtained, the center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

- (1) children;
- (2) the elderly; and
- (3) people with disabilities.

§379.2021. *Procedures Regarding Court Orders.*

A [The] center must develop, maintain, and comply with [have] written policies and procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order;

(2) on whom court orders may be served, such as the custodian of the records;

(3) which attorney(s) should be contacted;

(4) who will discuss the subpoena and legal options with the program participant or other victim of family violence, and at what point; and

(5) compliance with state and federal confidentiality provisions; and

(6) [(5)] the circumstances under which records may be released.

§379.2022. *Notification of Court Orders.*

A [The] center must attempt, whenever possible, to notify a program participant, hotline caller, or other victim of family violence when a court order affects the individual [program participant] or the individual's [program participant's] records.

§379.2023. *Policies and Procedures for the Retention and Destruction of Documentation.*

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to all program participants, including, but not limited to:

- (1) case notes, case content, and case files;
- (2) staff-to-staff communications; and
- (3) documentation required by other funders.

(b) Length of retention must be at least 3 years and 90 calendar days after the date of the last service.

§379.2024. *Minimum Hours for a Nonresidential Center.*

A [The] center must provide services to victims of family violence a minimum of 40 hours per week with a consistent schedule of service

hours that may be regular business hours or other hours as approved by the Health and Human Services Commission.

§379.2025. *Requirements if a Victim of Family Violence Needs Shelter Services.*

A [The] center must develop, maintain, and comply with [have] written referral procedures for helping victims of family violence obtain temporary shelter.

§379.2026. *Disruption in Providing Services.*

(a) A [The] center must develop, maintain, and comply with [have] written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be verbally reported immediately to the Health and Human Services Commission (HHSC).

(c) After the initial verbal [oral] notification, the center must submit to HHSC, within two weeks, [the Commission] a written description of the disruption and how services will be or were maintained.

§379.2027. *Program Participant Rights.*

A [The] center must:

- (1) provide written rights to all program participants; [and]
- (2) make reasonable accommodations to provide written rights for program participants with limited English proficiency; and
- (3) [(2)] post program participant rights in a visible area within all center facilities.

§379.2028. *Cooperation With Criminal Justice Officials.*

A [The] center must develop and maintain a written plan that outlines efforts to cooperate with criminal justice officials in each county where services are provided, including:

- (1) establishing an ongoing working relationship with local criminal justice officials;
- (2) encouraging the justice system to develop policies and procedures that are responsive to the needs of victims of family violence and enhance collaboration among justice system agencies and service providers;
- (3) pursuing opportunities to participate in the training of law enforcement officers and other criminal justice officials;
- (4) providing information and education to law enforcement and criminal justice officials about the dynamics of family violence, services available, and support needed from the criminal justice system; and
- (5) encouraging local criminal justice professionals to post signs and leave brochures in their offices about family violence and the availability of services.

§379.2029. *Community Education.*

(a) A [The] center must have [a] written policies and procedures [policy] about community education that:

- (1) ensure that [ensures] community education is provided to as many diverse groups as possible in each county where services are provided;
- (2) focus [foeuses] part of the community education on informing victims of family violence of existing family violence services; and
- (3) comply [eomplies] with §379.2008 of this title (relating to Access to Services for People with [With] Limited English Proficiency).

(b) When providing community education, a [The] center must:

- (1) use presentations;
- (2) distribute written materials; and
- (3) establish and use media contacts.

§379.2030. *Volunteer Program.*

A [The] center must develop, maintain, and comply with [have and follow] written policies and procedures regarding:

- (1) recruitment methods that reach diverse groups of people from the communities of each county where services are provided; and
- (2) screening, training, supervising, evaluating, and terminating volunteers.[: and]
- [(3) offering training for volunteers at least twice a year.]

§379.2032. *Content of Training for Direct Service Volunteers [Providing Services to Program Participants or Other Victims of Family Violence].*

A [The] center must provide [develop] training for direct service volunteers that includes, but is not limited to:

- (1) a brief history of the Texas Battered Women's Movement;
- (2) the need for and benefit of shelter services;
- (3) the dynamics of family violence;
- (4) a brief summary of current Texas laws that address family violence issues;
- (5) crisis intervention;
- (6) hotline skills, if applicable;
- (7) peer counseling techniques;
- (8) risk assessment and safety planning;
- (9) the center's [eenter] policies and procedures;
- (10) the organization's mission and philosophy;
- (11) confidentiality;
- (12) legal options for victims of family violence;
- (13) economic options for victims of family violence;
- (14) [(13)] community resources;
- (15) [(14)] sensitivity to cultural diversity; [and]
- (16) [(15)] the need for community systems to be responsive to the needs of victims of family violence; and[:]
- (17) applicable civil rights laws and regulations.

§379.2033. *Content of Training for Non-Direct Service Volunteers [Not Providing Services to Program Participants or Other Victims of Family Violence].*

A [The] center must provide non-direct service volunteers with:

- (1) a basic orientation of the duties they perform; [and]
- (2) the center's policies and procedures regarding confidentiality; and
- (3) [(2)] at a minimum, basic information about the organization's mission, philosophy, and policies.

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.2102 - 379.2114

Statutory Authority

The amendments and new rules are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments and new rules affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.2102. Data Collection.

(a) A [The] center must [will] regularly report complete and accurate data through the data collection system approved by the Health and Human Services Commission (HHSC), using service definitions in the Nonresidential Center Provider Manual. Data submission is due by the deadline specified in the contract. HHSC [The Commission] reserves the right to impose sanctions if complete and accurate data are not submitted on time.

(b) In the event that the [a] center may not be able to provide services due to a natural disaster or fire, the affected center will consult with HHSC [the Commission] regarding whether exceptions to data reporting deadlines and data collection service definitions [definition] should be made.

(c) When collecting and reporting data, the center must comply with state and federal confidentiality provisions.

§379.2103. Crisis Call Hotline.

(a) A [The] center must operate a hotline and comply with Health and Human Services [the] Commission (HHSC) requirements unless another organization located in the nonresidential center's service area provides a hotline that complies with HHSC [Commission] requirements.

(b) If the center operates the hotline, it must:

(1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number in all telephone directories [books] within the center's service area and on the center's website, if applicable;

(4) provide a minimum of two hotline telephone lines;

(5) ensure the caller has direct access to a live person who is trained to assess the person's safety and that a messaging system is not used to answer the hotline;

(6) provide caller [Caller] ID blocks on the center's numbers for outgoing calls to program participants and other victims of family violence, which may only be unblocked with permission from the program participant or victim of family violence;

(7) ensure the screening process complies with all state and federal laws if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, including victims of family violence with sensory and speech impairments;

(10) ensure the center is able to provide meaningful access to people with limited English proficiency; and

(11) [(+10)] if the center uses caller [Caller] ID or any other technology that establishes a record of calls on the hotline, the center must:

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) comply with the confidentiality requirements of §379.2023 of this subchapter (relating to Policies and Procedures for the Retention and Destruction of Documentation) regarding [limit access to] the records generated by caller ID or other technology. [these devices; and]

[(+11) ensure the center is able to provide meaningful access to people with limited English proficiency.]

§379.2104. Subcontracting the Crisis Call Hotline.

If a [the] center subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Health and Human Services Commission (HHSC) and must develop, maintain, and comply with [have] a written policy and procedure that addresses how the subcontractor meets HHSC's [the Commission's] training requirements for all direct service staff and will ensure immediate access to the center's 24-hour-a-day services.

§379.2105. Medical Care.

A [The] center is not required to provide or pay for emergency medical care, but must:

(1) maintain a current list of emergency medical care resources that can provide medical services for victims of family violence; and

(2) develop, maintain, and comply with written policies and procedures about providing or arranging [provide or arrange] for emergency transportation to and from emergency medical facilities for program participants or victims of family violence being considered for acceptance as program participants.

§379.2106. Program Participant's Orientation.

A [The] center must ensure that an [the] orientation is provided to a program participant orally and in writing, is documented, and includes, but is not limited to:

(1) explanation of services available;

(2) termination policy;

- (3) program participants' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality; ~~and~~
- (8) waivers of liability; ~~and~~[-]

(9) a wellness check for all family members that addresses their immediate needs.

§379.2107. Individual Service Plans.

A [The] center must develop and periodically update a written individual service plan with each adult program participant that reflects the program participant's self-identified [particular] needs.

§379.2108. Group Intervention.

~~[(a)]~~ A [The] center must:

- (1) provide at least one weekly support group for adult program participants; ~~and~~[-; but must]
- (2) not mandate adult program participant attendance at ~~for~~ weekly support groups.[-; and]

~~[(b) If the center provides direct intervention family violence services, it must not use state funds for inherently religious activities, must not promote any one religion, and must not require program participants to participate in religious groups or to use religious materials.]~~

§379.2109. Religion and Intervention Services.

If a center provides direct intervention family violence services, it must not use state funds for inherently religious activities, must not promote any one religion, and must not require program participants to participate in religious groups or to use religious materials.

§379.2110. Delivery of Children's Direct Services.

A center must:

- (1) have services available that are specific to meet the needs of children, including information and referral services; and
- (2) make reasonable accommodations to provide recreational or social activities for children during the time in which the adult parent is receiving services.

§379.2111. Safety Policies and Procedures for Delivering Services to Children.

(a) A center must develop, maintain, and comply with written nonviolent disciplinary policies and procedures regarding child program participants, including policies and procedures for adult program participants, employees, and volunteers who provide services to children.

(b) A center must develop, maintain, and comply with written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children when employees or volunteers take children on outings.

§379.2112. Texas Department of Family and Protective Services' (DFPS) Child Care Permit.

A center that provides child care that is subject to DFPS regulation under 40 TAC Chapter 743 (relating to Minimum Standards for Shelter Care) must comply with the requirements of that chapter and any other relevant law, including relevant sections of Chapter 42, Human Resources Code and 40 TAC Chapter 745 (relating to Licensing).

§379.2113. Legal Assistance Services.

A center must:

(1) maintain a current list of local legal entities, including civil and criminal justice agencies, and contact people in each county where services are provided;

(2) offer support and accompaniment to program participants in their pursuit of legal options;

(3) ensure legal advocacy services are available and specific to the needs of victims of family violence; and

(4) encourage the justice system to respond consistently to the needs of victims of family violence and to hold batterers accountable.

§379.2114. Training and Employment Services.

A center must provide or arrange the following for program participants:

- (1) assistance preparing employment and training program applications and resumes; and
- (2) information on job-seeking skills.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301382

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 424-6900



1 TAC §§379.2109 - 379.2113

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The repeals affect the Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

§379.2109. Delivery of Children's Direct Services.

§379.2110. Safety Policies and Procedures for Delivering Services to Children.

§379.2111. Texas Department of Family and Protective Services' (DFPS) Childcare Licensing Regulations.

§379.2112. Legal Assistance Services.

§379.2113. Training and Employment Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2013.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Texas Department of Insurance proposes amendments to 28 TAC §9.1 and §9.401, adopting by reference amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual)* and to the *Texas Title Insurance Statistical Plan (Statistical Plan)*. The proposed amendments revise the effective dates of the amended *Basic Manual* and *Statistical Plan*, update TDI's address, and add the TDI website address in both sections. The commissioner of insurance considered the items submitted by the title industry and TDI staff on February 28, 2012, at the 2012 Texas Title Insurance Periodic Hearing, Docket Number 2732. The commissioner called the hearing under Insurance Code §2703.202 and §2703.206.

The proposed amendments are identified by the item numbers used for the original submissions in the February 28, 2012, hearing. This proposal is necessary to adopt new rules and forms and modify or replace currently existing rules and forms in the *Basic Manual* and *Statistical Plan* to facilitate the administration and regulation of title insurance and to update, correct, clarify, or harmonize title insurance rules and forms. Items proposed for approval are detailed below. In some of these items, TDI has made substantive changes to the original submissions. The description of each agenda item includes a brief explanation of any substantive changes. TDI has also made nonsubstantive editorial changes to the following original submissions: Items 2012-1, 2012-2, 2012-3, 2012-4, 2012-5, 2012-6, 2012-8, 2012-9, 2012-12, 2012-13, 2012-14, 2012-16, 2012-19, 2012-20, 2012-21, 2012-22, 2012-24, 2012-25, 2012-26, 2012-27, 2012-28, 2012-29, 2012-30, 2012-31, 2012-32, 2012-39, 2012-42, 2012-47, 2012-50, 2012-51, 2012-54, 2012-55, 2012-57, 2012-62, 2012-63, 2012-64, 2012-65, 2012-66, 2012-71, 2012-72, 2012-77, 2012-80, 2012-83, 2012-84, 2012-85, 2012-86, 2012-87, 2012-88, 2012-89, and 2012-90.

Items 2012-10, 2012-15, 2012-34, 2012-43, 2012-44, 2012-46, 2012-60, 2012-61, and 2012-68 were withdrawn from consideration at the February 28, 2012, hearing at the request of the original petitioners. As explained in Commissioner's Order No. 12-0217, dated March 19, 2012, TDI has elected not to propose the following items: 2012-7, 2012-40, 2012-48, 2012-49, 2012-53, 2012-56, 2012-58, 2012-59, 2012-72 as revised by Stewart Title Guaranty Company, and 2012-91.

TDI proposes the following items for adoption:

Item 2012-1: Amends Form T-7, Commitment for Title Insurance, to correct typographical errors and conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-2: Amends Form T-1, Owner's Policy of Title Insurance, to correct margins and conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-3: Amends Form T-2, Loan Policy of Title Insurance, to correct margins.

Item 2012-4: Amends Form T-43, Texas Reverse Mortgage Endorsement, to conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-5: Amends Form T-42, Equity Loan Mortgage Endorsement, to conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-6: Amends Form T-42.1, Supplemental Coverage Equity Loan Mortgage Endorsement, to conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-8: Amends Form T-98, Limited Pre-Foreclosure Policy, to correct typographical errors in the *Basic Manual*.

Item 2012-9: Amends Form T-46, Texas Residential Limited Coverage Junior Mortgagee Policy Home Equity Line of Credit/Variable Rate Endorsement, to conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-11: Amends Rate Rule R-15, Owner Policy Endorsement, to correct typographical errors and conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-12: Amends Rate Rule R-17, Policy Forms for Use by United States Government, to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-13: Amends Rate Rule R-22, Owner and Leasehold Policies, to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-14: Amends Procedural Rule P-1.w, regarding the definition of "premium," to correct typographical errors in the *Basic Manual*.

Item 2012-16: Amends Form T-56, Owner Policy Rejection Form, to correct typographical errors and conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-17: Amends Procedural Rule P-70(b), regarding Cancellation Fees; Fees for Services Rendered, to correct a typographical error in the *Basic Manual*.

Item 2012-18: Amends Form T-14, First Loss Endorsement, to conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-19: Amends Form T-16, Mortgagee Policy Aggregation Endorsement, to conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-20: Amends Form T-53, Texas Limited Coverage Residential Chain of Title Policy Combined Schedule, to conform the language in the form to other rules and forms in the *Basic Manual*, correct margins, and correct a reference to a 12-month chain of title by making the period of time referenced not more than sixty months.

Item 2012-21: Minimum Capitalization Rule. TDI proposes new Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158. The rule includes the timetables and capitalization amounts in Insurance Code §2651.012, to achieve compliance with minimum capitalization

requirements. TDI has changed the implementation dates from those in the original submission to allow affected persons time to comply after the rule becomes effective. TDI has removed paragraph II.C. from the original submission to clarify that a change in a company's operations does not change the date used to calculate the minimum capitalization requirement. As stated at the hearing, in a "white knight" situation, if a company needs a capital infusion, it certainly needs a solvency account. For example, if a person inherits an existing company, there is no guarantee that the new owner of the company will have sufficient experience in the field to operate without a solvency account.

Item 2012-22: Minimum Capitalization Certification of Assets Form. TDI proposes new Form T-S1, Title Agent's Unencumbered Assets Certification Form. The form certifies unencumbered assets, pursuant to Insurance Code §2651.158. The form specifies the title agent's method of meeting the required minimum capitalization, and would normally accompany the annual audit of escrow accounts submitted to TDI unless the agent made a deposit under Insurance Code §2651.012(f).

Item 2012-23: Solvency Account Rule. TDI proposes new Rule S.2, Solvency Account for Capitalization Standards, to meet the requirements of Insurance Code §2651.012. The rule sets forth the requirements for establishing and maintaining a solvency account.

Item 2012-24: Solvency Account Tripartite Agreement Form. TDI proposes new Form T-S2, Tripartite Agreement, to establish a solvency account to comply with capitalization requirements. The form authorizes release of funds from a solvency account in limited circumstances. TDI has amended the original submission to clarify the language regarding the release of funds, to allow the agent to withdraw excess funds after a 10-day waiting period, to clarify that the commissioner's designee can sign the agreement, and to add a notarization field to the form.

Item 2012-25: Release of Solvency Account Assets Rule. TDI proposes new Rule S.3, Title Agent Requirements, procedures, and forms for obtaining release of assets under Insurance Code §2651.012(b) or §2651.0121. The rule provides procedures to request the release of assets, including funds held in a solvency account, under §2651.0121. The rule articulates the steps to take to obtain a release of assets.

Item 2012-26: Release of Solvency Account Request Form. TDI proposes new Form T-S3, Solvency Account Release Request, to meet the Insurance Code §2651.0121(i) requirement to provide a form for an agent to use to request the release of funds held in a solvency account under §2651.0121. The form provides a checklist for the actions required to request the release.

Item 2012-27: Surety Bond Rule. TDI proposes new Rule S.7, Surety Bond for Title Agents to Comply with Minimum Capitalization Standards. The rule enables title agents to comply with capitalization requirements by using a surety bond.

Item 2012-28: Surety Bond Form. TDI proposes a new form of surety bond as an option for title agents to meet capitalization requirements. TDI has changed the 30-day notice period for bond cancellation to a 60-day notice period. At the February 28, 2012, hearing, the Texas Land Title Association (TLTA), which filed the original 2012-28 submission, stated that it did not object to the change.

Item 2012-29: Title Company Financial Matter Disclosure Rule. TDI proposes new Rule S.4, Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent

Financial Solvency Information to the Department Pursuant to §2651.011. The rule provides that an underwriter may provide information to TDI about a financial matter that may relate to the solvency of a title agent.

Item 2012-30: Title Company Financial Matter Disclosure Authorized Officer's Form. TDI proposes new Form T-S4, Annual Report of Title Company's Officers Authorized to Provide Information on Agent Financial Matters. This form provides a form for title companies to identify to TDI the officers of the title company who are authorized to provide privileged financial information to TDI regarding title agents.

Item 2012-31: Title Company Financial Matter Disclosure Form. TDI proposes new Form T-S4-A, Financial Matter Disclosure Report. The form provides a means for a designated officer of a title company to provide information to TDI under Insurance Code §2651.011. It declares that financial information regarding a title agent that is provided to TDI by a title company is not public information.

Item 2012-32: Title Agent's Quarterly Withholding Tax Report Rule. TDI proposes new Rule S.5, Filing of Title Agent's Quarterly Withholding Tax Report. The rule provides TDI with an early warning tool to monitor the financial condition of title agents. It requires agents to file with TDI copies of their quarterly withholding tax reports or their equivalent.

Item 2012-33: Title Agent's Quarterly Withholding Tax Report Form. TDI proposes new Form T-S5, Title Agent Certification Form of Agent's Quarterly Tax Reports. The form provides a method for a title agent to certify that the agent had no employees during a calendar quarter and did not file a quarterly withholding tax report.

Item 2012-35: Title Agent Examinations Report Rule. TDI proposes new Rule S.6, Requirements for Title Agent Examination Reports Pursuant to §2651.206. The rule adds a new section to the *Basic Manual* to incorporate statutory changes resulting from HB 4338, 81st Legislature, Regular Session (2009). Under Insurance Code §2651.206, the rule establishes requirements and procedures for an examination report. The procedures allow the title agent to respond to the contents and conclusions of the report and allow for an appeal under 28 TAC §7.83. TDI has modified the original submission to clarify the rule's applicability and procedures, and to specify which TDI division will handle the appeals.

Item 2012-36: Abstract Plant Requirement Rule (P-1 and P-12). Amends Procedural Rules P-1 and P-12. The rule amends the P-1 definition of abstract plant to be consistent with Insurance Code §2501.004(b). The rule amends P-12 to be consistent with §2501.004 and updates certain statutory references.

Item 2012-37: Abstract Plant Requirement Form (T-57). Amends Form T-57, Agreement to Furnish Title Evidence, to be consistent with Insurance Code §2501.004(b).

Item 2012-38: Amends Procedural Rule P-5.1, Exception or Exclusion Regarding Minerals. Insurance Code §2703.0515 and §2703.055, enacted in HB 2408, 82nd Legislature, Regular Session (2011), provide that a title insurance company is not required to issue a minerals endorsement after January 1, 2012.

Item 2012-39: Amends Procedural Rule P-50.1, Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). Insurance Code §2703.0515 and §2703.055, enacted in HB 2408 provide that

a title insurance company is not required to issue a minerals endorsement after January 1, 2012.

Item 2012-41: Repeals Rate Rule R-36, Credit for Exclusion of or General Exception for Minerals. HB 2408 enacted §2703.056(b), which prohibits premium credits for minerals, effective January 1, 2012. As a result, TDI proposes repealing Rate Rule R-36.

Item 2012-42: Amends R-29.1, Premium for Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). As a result of HB 2408, enacting Insurance Code §2703.0515 and §2703.055, no charge may be made for either endorsement to a Loan Policy issued after January 1, 2012.

Item 2012-45: Changes the Texas Title Insurance Guaranty Association's address on the Policy Guaranty Fee Remittance Form to "[current address]" to update the form and provide more flexibility for future changes to information without a rule amendment.

Item 2012-47: Amends disclosure requirements with respect to third party notaries to conform the rule to Insurance Code §2501.008.

Item 2012-50: Amends Procedural Rule P-57, Additional Insured Endorsement (T-26), to include "Fairway language" for an optional coverage. In *Fairway Dev. Co. v. Title Ins. Co. of Minn.*, 621 F. Supp. 120 (N.D. Ohio 1985), the court held that the assignment of partnership interests from two partners to the remaining partner and a new third-party purchaser resulted in the termination of the title-insured partnership and the creation of a new partnership. The new partnership lacked standing to bring an action under the title policy issued to the original partnership. The coverage in the amended endorsement would provide that the transfer of an interest in a limited liability company insured under an owner's policy would not be deemed to create a new entity that is not entitled to the benefits of the policy.

Item 2012-51: Amends Form T-26, Additional Insured Endorsement, to include "Fairway language" for an optional coverage. The coverage would provide that the transfer of an interest in a limited liability company insured under an owner's policy would not be deemed to create a new entity that is not entitled to the benefits of the policy. TDI has also removed a duplicative paragraph from the original submission.

Item 2012-52: Amends Procedural Rule P-58, Report on Directly Issued Policy, to add an Out of County Status Code. This conforms the rule to Form T-00, which contains three Directly Issued Policy Status Codes, rather than only the two currently listed in P-58.

Item 2012-54: Amends Form T-11, Policy of Title Insurance (USA), to add a creditors' rights exclusion relating to the transaction, in compliance with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.

Item 2012-55: Amends Form T-38, Mortgagee Policy of Title Insurance P-9.b.(e) Endorsement, to add a creditors' rights exclusion relating to the transaction, in compliance with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.

Item 2012-57: Amends Form T-16, Mortgagee Policy Aggregation Endorsement, to provide optional language that could provide a separate lower limit of liability for the policy in identified states in order to conform to single risk limits. The amendment

also conforms the language in the form to the current text of ALTA Endorsement 12-06.

Item 2012-62: Amends Form T-19, Restrictions, Encroachments, Minerals Endorsement to ensure that a recorded document clearly identifies the terms of a covenant, condition, or restriction. This endorsement separately insures against loss of priority of the lien of the Insured Mortgage or of title because of the provisions of the covenant, condition, or restriction in paragraph 2, and insures against current violations in paragraph 1.b. TDI has removed paragraph 5.e. from the original submission, because it could negate the coverage promised in paragraph 4.d.

Item 2012-63: Amends Form T-19.1, Restrictions, Encroachments, Minerals Endorsement - Owner Policy to ensure that a recorded document clearly identifies the terms of a covenant, condition, or restriction. This endorsement separately insures against current violations in paragraph 1.a. TDI has removed paragraph 5.e. from the original submission because it could negate the coverage promised in paragraph 4.d.

Item 2012-64: Amends Form T-4, Leasehold Owner's Policy Endorsement, to conform Form T-4 to ALTA Endorsement 13-06 (Leasehold - Owner's). In consultation with Stewart Title Guaranty Company, which originally submitted the agenda item, TDI has resolved inconsistencies in the use of "tenant" and "insured" in the form.

Item 2012-65: Amends Form T-4R, Residential Leasehold Endorsement, to conform Form T-4R to ALTA Endorsement 13-06 (Leasehold - Owner's).

Item 2012-66: Amends Form T-5, Leasehold Loan Policy Endorsement, to conform Form T-5 to ALTA Endorsement 13.1-06 (Leasehold - Loan).

Item 2012-67: TDI proposes new Form T-36.1, Commercial Environmental Protection Lien Endorsement. This endorsement is ALTA Endorsement 8.2-06. In commercial loan transactions in other jurisdictions, an ALTA 8.2-06 Endorsement is commonly requested and issued.

Item 2012-69: TDI proposes new Form T-54, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This endorsement affects the measure of damages available if there are title defects that cause diminution of value in certain circumstances, or certain costs incurred resulting from the defect. TDI has changed the location of this form from the location proposed in the original submission.

Item 2012-70: TDI proposes new Procedural Rule P-72, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This endorsement affects the measure of damages available if there are title defects that cause diminution of value in certain circumstances, or certain costs incurred resulting from the defect. TDI has modified the original submission to clarify that a company may not charge a premium for the Severable Improvements Endorsement unless and until an applicable rate rule is in effect.

Item 2012-71: Amends Rate Rule R-11 to update references. This item incorporates changes suggested by TLTA in withdrawn Agenda Item 2012-10 re: R-11(D).

Item 2012-72: Amends Procedural Rule P-9 to incorporate suggested changes to Rate Rule R-11 in withdrawn Agenda Item 2008-61, to update references, and to conform the language in

the rule to other rules and forms in the *Basic Manual*. This item incorporates changes submitted by TLTA in withdrawn Agenda Item 2012-15. TDI has amended the original submission to include language from Stewart Title Guaranty Company's disapproved Agenda Item 2012-72 regarding Endorsement Form T-36.1, to address situations in which a loan policy is issued covering the lien securing an indebtedness against land that is not used or is to be used primarily for residential purposes.

Item 2012-73: Amends Form T-1R continuation of coverage language to conform to Insurance Code §2703.101(g) enacted by HB 3768, 81st Legislature, Regular Session (2009).

Item 2012-74: Amends Rate Rule R-5 to correct references as a result of paragraph rearrangement and renumbering in Agenda Item 2008-57.

Item 2012-75: Amends Rate Rule R-21 to update the reference to Rate Rule R-3, which changed to Procedural Rule P-66 as a result of Agenda Item 2008-65, and to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-76: Rescinds Rate Rule R-10 as obsolete.

Item 2012-77: Amends Rate Rule R-32 to include the reference to Form T-25.1 (Agenda Item 2008-39) adopted for Procedural Rule P-56 (Agenda Item 2008-56) and to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-78: Amends Procedural Rule P-16 to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-79: Amends Procedural Rule P-11 to conform to changes made to Property Code §12.017 by HB 3945, 81st Legislature, Regular Session (2009).

Item 2012-80: Amends Form T-2R and T-2R Addendum to incorporate previous changes and correct references.

Item 2012-81: Amends Rate Rule R-2 to conform to the changes made to R-5 in Agenda Item 2008-57 and to correct a typographical error.

Item 2012-82: Amends Rate Rule R-20 to conform to the changes made to R-5 in Agenda Item 2008-57.

Item 2012-83: Amends Form T-48, Co-Insurance Endorsement, to modify signature lines.

Item 2012-84: Amends Form T-31, Manufactured Housing Endorsement, to update language and references.

Item 2012-85: Amends Administrative Rule L-1, Title Insurance Agent, to include requirements when a title insurance agent changes abstract plant provider, or buys or sells an abstract plant, to update definitions, to streamline the process, and to conform to Procedural Rule P-28. TDI has made substantive changes to the original submission. The substantive changes include amendments that allow title agents to operate under a single license, rather than being required to have a license for each underwriter with which the title agent does business. The title agent must possess an appointment from at least one title company in order to obtain a license. The agent's license must be renewed every two years, and will be suspended during any period during which the agent does not possess a valid appointment.

Item 2012-86: Amends Administrative Rule L-3, Direct Operations License, to include requirements when a Direct Operation changes abstract plant provider or buys or sells an abstract plant. TDI has made substantive changes to the original submission

that conform the requirements in Administrative Rule L-3 to the requirements in Administrative Rule L-1, where possible, to enhance consistency and efficiency.

Item 2012-87: Amends Administrative Rule L-2, Title Insurance Escrow Officer, to incorporate the changes of HB 652, 81st Legislature, Regular Session (2009) regarding escrow officer schedule bonds, and to standardize formatting. Due to a functional reorganization within the department, TDI has amended the references to the Title Office.

Item 2012-88: Amends Procedural Rule P-28 to implement provisions for the Professional Training Program required by Insurance Code §2651.002(d) and §2651.0021, enacted in HB 4338 and effective on September 1, 2009. TDI has made nonsubstantive editorial changes to the original submission to conform the language in Procedural Rule P-28 to the new language in Administrative Rules L-1 and L-3, where necessary.

Item 2012-89: Amends Form T-3 instructions to better clarify the use of the form and to conform the language in the instructions to the rules and forms in the *Basic Manual*. TDI has amended the original submission to include language from disapproved Agenda Item 2012-56 regarding the creditors' rights exception and the conditions relating to the delivery of the promissory note, to be consistent with the exception in the ALTA Assignment Endorsements.

Item 2012-90: Amends the *Statistical Plan* to conform the language in the plan to other rules and forms in the *Basic Manual*. TDI has modified the original submission to include codes for items adopted at the February 28, 2012, hearing. TDI has also deleted the reference to the Credit for Exclusion of or General Exception for Minerals, since it is not currently a part of the *Statistical Plan*, and since the repeal of Rate Rule R-36 makes the code obsolete.

FISCAL NOTE. Marilyn Hamilton, Director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the proposed amendments are in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has also determined that, for each year of the first five years the proposed amendments are in effect, there will be significant public benefits as a result of enforcing or administering the proposed amendments. The expected benefits include consistent administration of rules, streamlined regulatory processing, and efficient closing of title transactions.

The new and updated forms will impose minimal additional regulatory costs on companies participating in the title insurance market. TDI expects the cost of reproducing forms to be between 6 cents and 8 cents per page for printing and paper. This cost should be fully compensated by the existing premium schedule.

ECONOMIC IMPACT STATEMENT. As stated in the cost note, TDI has determined that the proposed amendments to §9.1 and §9.401 will result in minimal additional costs per policy. TDI anticipates no differential impact between small, large, and micro businesses as a result of compliance with the proposal, and that the proposal will not have an adverse economic effect on small or micro businesses. The cost per hour of labor should not vary between small, large, and micro businesses. Further, it is nei-

ther legal nor feasible to exempt small or micro businesses or to waive compliance with the rule, considering that the amendments are proposed to promote efficient regulation of title insurance. As a result, under §2006.002(c) of the Government Code, TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments received during the hearing held on February 28, 2012, Docket Number 2732, are part of the record and have already been considered for purposes of this proposal. If you wish to comment on the proposal, or to request a public hearing, you must do so in writing no later than 5 p.m. on May 20, 2013. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or to ChiefClerk@tdi.texas.gov. Send the other copy to Marilyn Hamilton, Director, Personal and Commercial Lines Office, Property and Casualty Section, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or to marilyn.hamilton@tdi.texas.gov.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES, AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. TDI proposes the amendments under Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance.

Section 2703.153 authorizes and requires the commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for fixing premium rates.

Section 2703.202(c) authorizes the commissioner to conduct a public hearing in response to a qualifying request, or under §2703.206 as a rulemaking hearing under Subchapter B, Chapter 2001, Government Code.

Section 2703.203 requires the commissioner to hold a periodic hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance upon request by an association, title insurance company, title insurance agent, or member of the public admitted as a party under §2703.204.

Section 2703.204 requires admission of certain persons as parties to the periodic hearing conducted under §2703.203.

Section 2703.206 authorizes the commissioner to order a public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance as the commissioner determines necessary or proper.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposal implements the following statutes: Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

§9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended effective June 1, 2013 [~~February 1, 2010~~]. The document is available from and on file at the Texas Department of Insurance, Personal and Commercial Lines Office - Title, Property and Casualty Section, [Title Division,] Mail Code 104-PC [~~106-2F, 333 Guadalupe Street~~], P.O. Box 149104, Austin, Texas 78714-9104 [~~78701-3938~~]. The document is also available on the TDI website at www.tdi.texas.gov.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 5, 2013.

TRD-201301374

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 463-6327



SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. TDI proposes the amendments under Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance.

Section 2703.153 authorizes and requires the commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for fixing premium rates.

Section 2703.202(c) authorizes the commissioner to conduct a public hearing in response to a qualifying request, or under §2703.206 as a rulemaking hearing under Subchapter B, Chapter 2001, Government Code.

Section 2703.203 requires the commissioner to hold a periodic hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance upon request by an association, title insurance company, title insurance agent, or member of the public admitted as a party under §2703.204.

Section 2703.204 requires admission of certain persons as parties to the periodic hearing conducted under §2703.203.

Section 2703.206 authorizes the commissioner to order a public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance as the commissioner determines necessary or proper.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposal implements the following statutes: Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

§9.401. *Texas Title Insurance Statistical Plan.*

The Texas Department of Insurance adopts by reference the rules contained in the *Texas Title Insurance Statistical Plan* as amended effective June 1, 2013 [February 1, 2010]. This document is published by and is available from the Texas Department of Insurance, [and is available from the] Data Services, Property and Casualty Section [Data Services Division], Mail Code 105-5D, [Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street,] P.O. Box 149104, Austin, Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 5, 2013.

TRD-201301375

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 463-6327



CHAPTER 19. AGENTS' LICENSING

SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS

28 TAC §§19.701, 19.708, 19.713

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §§19.701, 19.708, and 19.713, concerning contracts used by licensed public insurance ad-

justers and rules that govern the professional ethics of public insurance adjusters. These amendments are necessary to clarify the language required in contracts used by licensed public insurance adjusters by specifying how fees or commissions paid by consumers will be calculated.

The proposed amendments contain both substantive and non-substantive changes. The nonsubstantive changes correct punctuation, add clarity, and conform the draft proposal to current agency style. The proposed amendments also contain updated citations that conform with Insurance Code disposition tables, renumbered sections to accommodate the proposed amendments, and repetitive recitation of proposed section numbers.

Section 19.701 Definitions

Section 19.701(a) is changed by replacing "Article 21.07 §1A" with "Chapter 4001." Section 19.701(b) is changed by deleting "shall." Section 19.701(b)(1) is added to define the term "commission," and adds that a commission is "any amount received by a public insurance adjuster for service provided under Insurance Code Chapter 4102, consisting of an hourly fee, a flat rate, a percentage of the total amount paid by the insurer to resolve a claim, or another method of compensation, not to exceed 10 percent of the amount of the insurance settlement on the claim, including expenses, direct costs, or any other costs accrued by the public insurance adjuster." Former paragraph (1) is redesignated as paragraph (2) and defines the term "corporation." Former paragraph (2) is redesignated as paragraph (3) and defines the term "partnership." Former paragraph (3) is redesignated as new paragraph (4) and defines the term "public insurance adjuster." Section 19.701(b)(4) also replaces "Article 21.07-5 §§5, 5A, 15 or 15A" with "Chapter 4102."

Section 19.708 Public Insurance Adjuster Contracts

Section 19.708(b)(1) adds the phrase, "with each page of the contract prominently displaying the license number(s)." Section 19.708(b)(10)(A) amendments update existing text for clarification and consistency with agency writing style. Section 19.708(b)(10)(B) amendments make the English and Spanish translations in §19.708(b)(10)(A) and §19.708(b)(10)(B) consistent with one another.

Section 19.708(b)(11)(B) is redesignated as new §19.708(b)(11), and adds, "a statement that under any method of compensation, the total commission payable to the public insurance adjuster must not exceed 10 percent of the amount of the insurance settlement, including expenses, direct costs, or any other costs accrued by the public insurance adjuster."

Section §19.708(b)(12) adds, "a statement disclosing whether insurance settlement proceeds paid to the insured prior to the date of the contract between the insured and the public insurance adjuster will be included in calculating the amount payable to the public insurance adjuster."

Section 19.708(b)(11) is redesignated as §19.708(b)(13), and adds the words "and prominent" before existing "statement of the public insurance adjuster's commission." Section 19.708(b)(13)(A), formerly §19.708(b)(11)(A), is amended by replacing the word "compensation" with "the commission," the word "either" with "whether," adds the words "an" and "rate," deletes the word "or," adds the phrase "or another method of compensation, specifically," and deletes the word "and."

Section 19.708(b)(13)(A)(i) - (iv) add, "if an hourly rate, the contract must state the hourly rate and how it will be applied to hours

of service provided by the public insurance adjuster to calculate the amount payable," "if a flat fee, the contract must state the amount that will be payable to the public insurance adjuster," "if a percentage, the contract must state the exact percentage that will be applied to the settlement on the claim to calculate the amount payable to the public insurance adjuster," and "if another method of calculation is chosen, the contract must include a detailed explanation of how the amount payable will be determined based on services provided by the public insurance adjuster."

Section 19.708(b)(13)(B) adds, "a general description of services the public insurance adjuster will provide under the contract."

Section 19.708(b)(13)(C) adds, "a description of the claim and property damage, location, and event date."

Section 19.708(b)(13)(D) adds, "a detailed listing of separate costs payable to the public insurance adjuster as part of the commission based on the claim settlement, including expenses, direct costs, and any other accrued costs, plus sales tax owed to the comptroller."

Section 19.708(b)(13)(E) adds, "a statement that, upon request, the insured will receive a detailed document listing the following." Section 19.708(b)(13)(E)(i) - (iv) add "(i) all amounts paid by the insurer before and after the date of the public insurance adjuster's contract; (ii) the services provided by the public insurance adjuster; (iii) the date of each service; and (iv) the time spent on each service."

Section 19.708(c) replaces the word "may" with "must."

Section 19.708(d) adds, "All public insurance adjusters in Texas must use a written contract that is in the form prescribed by the department and that complies with all relevant Insurance Code requirements and department rules." The section provides that public insurance adjusters must use one of the form options in §19.708(d)(1) - (3), which include: "(1) a standard language contract developed by the Texas Association of Public Insurance Adjusters and approved by the department; (2) a standard language contract developed by the department, identified by FIN 535; or (3) a contract filed and approved by the department prior to use."

Section 19.708(e) adds, "All contracts must be submitted with an original adjuster license application or an application for renewal to the department's Agent and Adjuster Licensing Office. Contracts also must be submitted to the office upon any modification or amendment of terms or conditions between license renewals."

Section 19.708(f) adds, "The failure by a public insurance adjuster or other individual to use a properly authorized and approved contract may result in suspension, nonrenewal, revocation, or other administrative penalty."

Section 19.713 Public Insurance Adjuster Code of Ethics

The proposed rule language also amends the heading of §19.713 by adding the words "Code of" and deleting the words "Rules of Professional Conduct and." Section 19.713(a) is amended by deleting the word "certain." The section is further amended by adding, "This section details requirements similar to the codes of ethics adopted by local and national public insurance adjusters' professional organizations."

Section 19.713(b) is amended by updating statutory references to the Insurance Code. Section 19.713(b) is also amended by updating existing text for clarification and consistency with

agency writing style. Section 19.713(b)(11) is added and states, "Licensees must fully disclose the method of calculation for commissions related to any contract with a member of the public."

FISCAL NOTE. Jamie Walker, Associate Commissioner of Licensing Services, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Walker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposal will be more market transparency through clearer communication by licensed public insurance adjusters regarding the calculation of fees and expenses, and a more standardized process for filing contracts used in consumer transactions with the department. This revised disclosure methodology is an effort to further ensure that each licensed public insurance adjuster adheres to relevant provisions of the Insurance Code, and provides clear and concise contract language to consumers that fully outlines all costs and expenses associated with the settlement of a claim. The cost to persons required to comply with the proposal are estimated to be negligible. The costs for compliance will not vary between the smallest and largest businesses because the costs will be the same for each category of individual required to comply with the proposal. Although the department does not believe that the proposed amendments will have an adverse effect on small and micro businesses, the department has considered the purpose of the applicable statutes, which is to clarify language required in public insurance adjuster contracts, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the department has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposed rule does not create any new, incremental costs for licensees that are subject to the existing requirements of §§19.701, 19.708, and 19.713. Although many licensed individuals did not obtain and file copies of contracts with the department as required by Insurance Code §4102.103(a), it is anticipated that most individuals within Texas will utilize the convenience of pre-approved contract forms, and as such, will not experience any adverse economic effect. In accord with Government Code §2006.002(c), the department has determined that a regulatory flexibility analysis is not required.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, so it does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 20, 2013. The department requires two copies of your comments or hearing request. Send your comments or request for hearing to the Chief Clerk, by email at: chief-clerk@tdi.texas.gov or by mail at: Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jamie Walker, Associate Commissioner of Licensing Services, by email at: Jamie.Walker@tdi.texas.gov or by mail at: Agent and Adjuster Licensing Office, Mail Code 9999, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§4102.004, 4102.005, 4102.103, 4102.104(a), 4102.104(b), and 36.001. Section 4102.004 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 4102, including rules regarding: the qualification of license holders, in addition to those prescribed by Insurance Code Chapter 4102, that are necessary to promote and protect the public interest; the regulation of the conduct of license holders; the prescription of fees required by §4102.066; and the regulation of advertisements under §4102.113 and the definition of "advertisement" as the term is used in that section. Section 4102.005 provides that the commissioner by rule shall adopt: a code of ethics for public insurance adjusters that fosters the education of public insurance adjusters concerning the ethical, legal, and business principles that should govern their conduct; recommendations regarding the solicitation of the adjustment of losses by public insurance adjusters; and any other principles of conduct or procedures that the commissioner considers necessary and reasonable. Section 4102.103 provides that a license holder may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the license holder and the insured or the insured's duly authorized representative; and that a license holder may not use any form of contract that is not approved by the commissioner. Section 4102.103 also provides that the contract must contain a provision allowing the client to rescind the contract by written notice to the license holder within 72 hours of signature, and must include a prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY;" and that the commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary. Section 4102.103 also provides that one copy of the contract shall be kept on file in this state by the license holder and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative. Section 4102.104(a) provides that, except as provided by §4102.104(b), a license holder may receive a commission for service provided under Chapter 4102 consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation, and the total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim. Section 4102.104(b) provides that a license holder may not receive a commission

consisting of a percentage of the total amount paid by an insurer to resolve a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy in accordance with §862.053. Section 4102.104(b) also provides that the license holder is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the license holder, until the claim is paid or the insured receives a written commitment to pay from the insurer. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapters 4001 and 4102.

§19.701. Definitions.

(a) Words and terms defined in Insurance Code Chapter 4001 [Article 21.07 §1A] shall have the same meaning when used in this subchapter.

(b) The following words and terms, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--Any amount received by a public insurance adjuster for service provided under Insurance Code Chapter 4102, consisting of an hourly fee, a flat rate, a percentage of the total amount paid by the insurer to resolve a claim, or another method of compensation, not to exceed 10 percent of the amount of the insurance settlement on the claim, including expenses, direct costs, or any other costs accrued by the public insurance adjuster.

(2) [(+)] Corporation--A legal entity that is organized under the business corporations laws or limited liability company laws of this state, another state, or a territory of the United States. The licensing and regulation of a limited liability company is subject to all provisions of this subchapter that apply to a corporation licensed under this subchapter.

(3) [(2)] Partnership--An association of two or more persons organized under the partnership laws or limited liability partnership laws of this state, another state, or a territory of the United States. The term includes a general partnership, limited partnership, limited liability partnership, and limited liability limited partnership.

(4) [(3)] Public Insurance Adjuster--A person licensed under Insurance Code Chapter 4102 [Article 21.07-5 §§5, 5A, 15 or 15A] or §19.704 of this subchapter (relating to Public Insurance Adjuster Licensing). A licensed public insurance adjuster may be otherwise referred to as a "license holder" or "licensee" in this subchapter.

§19.708. Public Insurance Adjuster Contracts.

(a) (No change.)

(b) A public insurance adjuster's written contract with an insured must contain:

(1) the name, address, and license number of the public insurance adjuster negotiating the contract and, if applicable, the name, address, and license number of the public insurance adjuster's employing public insurance adjuster, with each page of the contract prominently displaying the license number(s);

(2) - (9) (No change.)

(10) on the first or second page of the contract, the following English and Spanish notices in 10-point bold [faced] type:

(A) "IMPORTANT NOTICE: You may contact the Texas Department of Insurance to get [obtain] information about [on] public insurance adjusters, your rights as a consumer, or information about how to file a complaint by calling [and complaints at:] 1-800-252-3439; or you may write the Texas Department of Insurance, at PO [P.O.] Box 149104, Austin, Texas 78714-9104, or contact the department via Fax [#] 512- [(512)] 475-1771."

(B) "ADVISOR IMPORTANTE: Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca ajustadores [ajustores] públicos de seguros, [o] sus derechos como consumidor, o información sobre cómo presentar una queja llamando [información quejas at:] 1-800-252-3439; o puede escribir al Departamento de Seguros de Texas, en PO [P.O.] Box 149104, Austin, Texas 78714-9104, o comuníquese con el departamento a través de Fax [#] 512- [(512)] 475-1771." [and]

(11) a statement that under any method of compensation, the total commission payable to the public insurance adjuster must not exceed 10 percent of the amount of the insurance settlement, including expenses, direct costs, or any other costs accrued by the public insurance adjuster;

(12) a statement disclosing whether insurance settlement proceeds paid to the insured prior to the date of the contract between the insured and the public insurance adjuster will be included in calculating the amount payable to the public insurance adjuster; and

(13) [(44)] a clear and prominent statement of the public insurance adjuster's commission including:

(A) the method of calculating the commission [compensation] for the public insurance adjuster, whether an [either] hourly rate, flat fee, [or] percentage of settlement, or another method of compensation, specifically: [; and]

(i) if an hourly rate, the contract must state the hourly rate and how it will be applied to hours of service provided by the public insurance adjuster to calculate the amount payable;

(ii) if a flat fee, the contract must state the amount that will be payable to the public insurance adjuster;

(iii) if a percentage, the contract must state the exact percentage that will be applied to the settlement on the claim to calculate the amount payable to the public insurance adjuster; or

(iv) if another method of calculation is chosen, the contract must include a detailed explanation of how the amount payable will be determined based on services provided by the public insurance adjuster;

(B) a general description of services the public insurance adjuster will provide under the contract;

(C) a description of the claim and property damage, location, and event date;

(D) a detailed listing of separate costs payable to the public insurance adjuster as part of the commission based on the claim settlement, including expenses, direct costs, and any other accrued costs, plus sales tax owed to the comptroller; and

(E) a statement that, upon request, the insured will receive a detailed document listing the following:

(i) all amounts paid by the insurer before and after the date of the public insurance adjuster's contract;

(ii) the services provided by the public insurance adjuster;

(iii) the date of each service; and

(iv) the time spent on each service.

[(B)] a statement that under any method of compensation the total commission payable to the public insurance adjuster may not exceed 10% of the amount of the insurance settlement;

(c) The contract must [may] not contain any terms or conditions which have the effect of limiting or nullifying any requirements of the Insurance Code, this subchapter, or other rules of the department.

(d) All public insurance adjusters in Texas must use a written contract that is in the form prescribed by the department and that complies with all relevant Insurance Code requirements and department rules. Public insurance adjusters must select from the following contract form options:

(1) a standard language contract developed by the Texas Association of Public Insurance Adjusters and approved by the department;

(2) a standard language contract developed by the department, identified by FIN 535; or

(3) a contract filed and approved by the department prior to use.

(e) All contracts must be submitted with an original adjuster license application or an application for renewal to the department's Agent and Adjuster Licensing Office. Contracts also must be submitted to the office upon any modification or amendment of terms or conditions between license renewals.

(f) The failure by a public insurance adjuster or other individual to use a properly authorized and approved contract may result in suspension, nonrenewal, revocation, or other administrative penalty.

§19.713. Public Insurance Adjuster Code of [Rules of Professional Conduct and] Ethics.

(a) This section states [certain] legal and ethical requirements that are of prime importance for public insurance adjusters' professional conduct. This section does not exhaust the legal or ethical requirements that govern public insurance adjusters. This section details requirements similar to the codes of ethics adopted by local and national public insurance adjusters' professional organizations.

(b) All public insurance adjuster licensees must [shall] comply with the following requirements:

(1) Licensees must [shall] conduct business fairly with their clients, insurance companies, and the public; in a spirit of fairness and justice.

(2) Licensees must [shall] not employ any improper solicitation which would violate Insurance Code Chapter 4102 and applicable rules [Article 21.07-5 or this subchapter].

(3) Licensees must [shall] not make a misrepresentation, in violation of Insurance Code Chapter 4102 [Article 21.07-5, §23(m)(1)], to an insured or to an insurance company in the conduct of their actions as [a] public insurance adjusters [adjuster].

(4) Licensees must [shall] charge only commissions that comply [and fees which are in compliance] with the requirements set forth in Insurance Code Chapter 4102 [Article 21.07-5] and applicable rules [this subchapter].

(5) Licensees must [shall] complete continuing education as required by Insurance Code Chapter 4102 [Article 21.07-5] and this subchapter.

(6) Licensees must [shall] have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their area of expertise.

(7) Licensees must [shall] not engage in the unauthorized practice of law.

(8) Licensees must [shall] avoid situations of conflict of interest, including acquiring any interest in salvaged property or participating in any way, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee, except as allowed in Insurance Code Chapter 4102 [Article 21.07-5] and this subchapter.

(9) Licensees must [shall] not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of public insurance adjusting and that does not comply with Insurance Code Chapter 4102 [Article 21.07-5], this subchapter, or other provisions of the Insurance Code.

(10) Licensees must [shall] use only contracts that comply with Insurance Code Chapter 4102 [Article 21.07-5] and this subchapter.

(11) Licensees must fully disclose the method of calculation for commissions related to any contract with a member of the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2013.

TRD-201301339

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.191, 65.193, 65.199

The Texas Parks and Wildlife Department proposes amendments to §§65.190, 65.191, 65.193, and 65.199, concerning the Public Lands Proclamation.

The proposed amendment to §65.190, concerning Application, would make several nonsubstantive organizational and nomenclatural changes. The proposed amendment would add lan-

guage to subsection (b) to refer to the full name of the Caddo National Grasslands Wildlife Management Area (WMA) and organize the listing of the entities affected by subsections (a) and (b) by naming WMAs first, followed by other types of public hunting lands. The proposed amendment also would remove Old Tunnel and Walter Buck WMAs from the inventory of WMAs because they are now part of the state park system.

The proposed amendment to §65.191, concerning Definitions, would add the acronym "PHL" to the definition of "public hunting lands" so that public hunting lands can be referred to by an acronym when necessary.

The proposed amendment to §65.193, concerning Access Permit Required and Fees, would eliminate subsection (b)(4)(A) and (B), which are not necessary because they repeat provisions already contained in §65.190(b) and (c).

The proposed amendment to §65.199, concerning General Rules of Conduct, would define the term "unattended," clarify the use of dogs to hunt, and create offenses for leaving personal gear or floating conveyances unattended within the boundaries of public hunting lands or hunting with dogs in violation of the rule. WMA staff have experienced difficulties with the abandonment of gear and equipment (such as waterfowl decoys, temporary floating blinds, and personal effects) on public hunting lands and with user conflicts arising from temporary blinds and waterfowl decoys left out overnight to "stake a claim" to an area for hunting activities in the future. Unless a person has been drawn for or is participating in specific hunting activities scheduled by the department, the department believes that providing hunting opportunity on a daily, first-come, first-served basis is the most equitable method of distributing walk-in hunting privileges. Additionally, collecting and disposing of abandoned property diverts department field personnel from other duties. The proposed amendment would therefore prohibit leaving personal gear or floating conveyances unattended and would provide that such material is "unattended" if the person who is responsible for the gear, equipment, or floating conveyance is not within normal voice distance. The proposed amendment also would provide an exception for personal gear within designated campsites and camping areas and during multi-day hunts scheduled by the department.

The proposed amendment also would specify that dogs may be used to hunt on public hunting lands only when explicitly authorized by the department publications "Map Booklet for Public Hunting Lands" and "Applications for Drawings on Public Hunting Lands" and that it is an offense to use a dog to hunt on public hunting lands unless the use of dogs to hunt is specifically authorized in those publications. Under Parks and Wildlife Code, §81.402, the executive director of the department may regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands. The numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands are prescribed by executive order in the department publications entitled "Map Booklet for Public Hunting Lands" and "Applications for Drawings on Public Hunting Lands," which contain language addressing the use of dogs on public lands; however, in the interests of clarity, staff have determined that it has become necessary to explicitly state by rule that the rules governing the use of dogs on public hunting lands are set forth in those publications.

Linda Campbell, Director of Private Lands and Public Hunting, has determined that for each of the first five years that the rules

as proposed are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rules.

Ms. Campbell also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer rules that enhance enforcement and compliance.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed amendments will not impose any direct adverse economic effects on small businesses, micro-businesses, or persons required to comply. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Linda Campbell, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4395 (e-mail: linda.campbell@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §81.006, which prohibits the take, attempted take, or possession of any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands, authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands, and authorizes the commission to adopt rules governing recreational activities in wildlife management areas.

The proposed amendments affect Parks and Wildlife Code, Chapter 81.

§65.190. Application.

- (a) (No change.)

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo National Grasslands [~~Lake McClellan Recreation Area~~], Moore Plantation, Sam Houston National Forest WMAs, and ~~Lake McClellan Recreation Area~~) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter, except for the provisions of §65.199(c)(15) [~~§65.199(15)~~] of this title (relating to General Rules of Conduct).

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (~~Cooper, Dam B, Pat Mayse, Somerville, and White Oak Creek WMAs; Granger and Ray Roberts PHLs~~) [~~(Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs)~~], persons other than hunters and equestrian users are exempt from requirements for an access permit.

(d) (No change.)

(e) Public hunting lands include, but are not limited to, the following:

- (1) - (21) (No change.)
- (22) Granger [WMA] (Unit 709);
- (23) - (41) (No change.)
- ~~[(42) Old Tunnel WMA;]~~
- (42) ~~[(43)]~~ Pat Mayse WMA (Unit 705);
- (43) ~~[(44)]~~ Ray Roberts [WMA] (Unit 501);
- (44) ~~[(45)]~~ Redhead Pond WMA;
- (45) ~~[(46)]~~ Richland Creek WMA (Unit 703);
- (46) ~~[(47)]~~ Sam Houston National Forest WMA (Unit 905);
- (47) ~~[(48)]~~ Sierra Diablo WMA (Unit 767);
- (48) ~~[(49)]~~ Somerville WMA (Unit 711);
- (49) ~~[(50)]~~ Tawakoni WMA (Unit 708);
- ~~[(51) Walter Buek WMA (Unit 757);]~~
- (50) ~~[(52)]~~ Welder Flats WMA;
- (51) ~~[(53)]~~ White Oak Creek WMA (Unit 727); and
- (52) ~~[(54)]~~ Other numbered units of public hunting lands.

§65.191. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

- (1) - (35) (No change.)

(36) Public hunting lands (PHL)--Lands identified in §65.190 of this title (relating to Application) or by order of the executive director on which provisions of this subchapter apply.

- (37) - (49) (No change.)

§65.193. Access Permit Required and Fees.

- (a) (No change.)

(b) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

- (1) - (3) (No change.)

(4) The permits required under paragraphs (1) - (3) of this subsection are not required for:

~~[(A)]~~ persons who enter on United States Forest Service lands designated as a public hunting area or any portion of Units 902 and 903 for any purpose other than hunting;]

~~[(B)]~~ persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting or equestrian use;]

~~(A)~~ ~~[(C)]~~ persons who enter Caddo Lake Wildlife Management Area and do not hunt or enter upon the land;

~~(B)~~ ~~[(D)]~~ persons who enter and hunt waterfowl within the Bayside Marsh Unit of Matagorda Island State Park and Wildlife Management Area; or

~~(C)~~ ~~[(E)]~~ persons who enter Zone C of the Guadalupe River Unit of the Guadalupe Delta Wildlife Management Area and do not hunt or fish.

(5) - (6) (No change.)

(c) - (q) (No change.)

§65.199. General Rules of Conduct.

(a) This section applies to all public hunting lands unless an exception for a specific area and time period is designated by the executive director or by written permission of the department.

(b) For the purposes of this section, gear, equipment, and floating conveyances are "unattended" if the person who is responsible for the gear, equipment, or floating conveyance is not within normal voice distance of the gear, equipment, or floating conveyance.

(c) It is unlawful for any person to:

(1) fail to obey regulations posted at the area or policies established by order of the executive director, fail to comply with instructions on permits or area leaflets, or refuse to follow directives given by departmental personnel in the discharge of official duties;

(2) possess a firearm, archery equipment, or any other device for taking wildlife resources on public hunting lands, except for persons authorized by the department to hunt or conduct research on the area, commissioned law enforcement officers, and department employees in performance of their duties;

(3) camp or construct an open fire anywhere other than in a designated campsite. On the Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs, this restriction applies only during the period from the day prior to the opening of the archery deer season through the day following the close of the general deer season;

(4) camp for more than 14 consecutive days on the same unit of public hunting lands, or for more than 21 days in any 30-day period;

(5) cause, create, or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10 p.m. and 6 a.m.;

(6) establish a camp and leave it unattended for a period of longer than 24 hours;

(7) disturb or remove plants, wood, rocks, gravel, sand, soil, shell, artifacts, or other objects from public hunting lands, except as authorized by the department;

(8) write on, scratch, or otherwise deface natural features, signs, buildings, or other structures;

(9) fail to deposit refuse in designated containers or fail to remove it from the area;

(10) consume or be under the influence of alcohol while engaged in hunting activities, or to publicly consume or display an alcoholic beverage while on public hunting lands;

(11) possess dogs in camp that are not confined or leashed;

(12) use or possess any type of riding stock or pack animal on public hunting lands at any time, except:

(A) as may be provided by order of the executive director; or

(B) by written authorization of the department;

(13) use an airboat within the boundaries of public hunting lands, except as provided by executive order or by written permission of the department;

(14) take an antlerless deer during the general open season on wildlife management areas jointly managed by TPW and the U.S. Forest Service (Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest) unless that person possesses on their person a U.S.F.S. antlerless permit;

(15) enter a unit of public hunting lands with an equine or equines, or cause the entry of an equine or equines to a unit of public hunting lands, unless that person has in their immediate possession, for each equine in the person's custody or equine that the person allowed to enter the unit of public hunting lands, a completed VS Form 10-11 (Texas Animal Health Commission) showing that the equine has tested negative to an official Equine Infectious Anemia test within the previous 12 months. The documentation required by this paragraph shall be made available for inspection upon the request of any department employee acting within the scope of official duties;

(16) park or leave a motor vehicle unattended anywhere other than in designated parking areas, if parking areas have been designated;

(17) use a motor vehicle, off-road vehicle, or ATV on a road, in an area, or at a time when such use is restricted to disabled persons, unless the person is in possession of a state-issued disabled parking placard or disabled license plate or assisting such a person;[-]

(18) leave a floating conveyance of any type unattended within the boundaries of public hunting lands;

(19) leave personal gear or equipment (including decoys) unattended for more than one hour following the close of legal shooting hours. This paragraph does not apply to personal gear or equipment:

(A) within a designated camping area or designated campsite; or

(B) that is unattended during reserved participation in a public hunting activity that has been specifically scheduled by the department.

(20) [(+8)] engage in any activity not specifically authorized by order of the executive director or regulation of the commission.

(d) Hunting with Dogs.

(1) Dogs may be possessed and used to hunt animals and birds on public hunting lands only as provided:

(A) in the "Legal Game Legend" provided for each unit of public hunting lands in the department publication entitled "Map Booklet for Public Hunting Lands;" or

(B) in the case of drawn hunts, in the department publication entitled "Applications for Drawings on Public Hunting Lands."

(2) It is an offense for any person to use a dog to hunt a bird or animal on public hunting lands except as authorized:

(A) in the "Legal Game Legend" provided for each unit of public hunting lands in the department publication entitled "Map Booklet for Public Hunting Lands"; or

(B) in the "Applications for Drawings on Public Hunting Lands."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2013.

TRD-201301366

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 389-4775



SUBCHAPTER K. RAPTOR PROCLAMATION

31 TAC §§65.264, 65.267, 65.270

The Texas Parks and Wildlife Department proposes amendments to §§65.264, 65.267, and 65.270, concerning the Raptor Proclamation, which governs the practice of falconry. The practice of falconry is regulated at both the state and federal levels. The federal authority to regulate falconry is derived from the Migratory Bird Treaty Act, an international treaty to which the United States is a signatory. As with all migratory bird rules, the states may adopt rules that are more restrictive than the federal rules, but may not adopt rules that are less restrictive.

The proposed amendment to §65.264, concerning Permit Application Requirements, would clarify flight-time requirements for apprentice permittees. The current rules require an applicant for a general permit to have "maintained (to include capture from the wild), trained, flown (which may include releasing to the wild) and hunted with raptors in the applicant's possession for at least four months in each of at least two years during which the person has been permitted to practice falconry." The department has become aware that at least one person interprets the provision to mean that the two years of experience can be attained with a bird that was not trapped from the wild by the apprentice (i.e., a bird trapped by another falconer or obtained from another falconer). This is not the intent of the requirement. The purpose of the apprentice level of falconry permit is to ensure that a person entering the sport of falconry be mentored and supervised by an experienced falconer for two years before being allowed to obtain a permit that allows that person to practice falconry alone. In this way, the department can be reasonably confident that a person who enjoys the privilege of possessing and using a live, publicly-owned wildlife resource has received the proper training in the care of raptors, raptor biology/ecology, and the art of trapping and using raptors for hunting purposes and can be expected to behave responsibly if issued a general falconry permit. The proposed amendment would make clear that requirements of the provision can be satisfied only by means of a raptor trapped from

the wild by the apprentice, unless the raptor was trapped by a general or master permittee under a physician's statement.

The proposed amendment to §65.267, concerning Permit Privileges and Restrictions, would remove the prohibition on the possession of non-sterilized raptors by apprentice falconers. In 2010, the U.S. Fish and Wildlife Service revamped the federal regulations governing the possession and use of native raptors. Prior to 2010, federal rules prohibited the possession of hybridized raptors by apprentice falconers. When the department reorganized falconry regulations in 2010, that prohibition was inadvertently retained. Because federal regulations no longer prohibit the possession of unsterilized hybridized raptors by apprentice falconers, the department sees no reason to retain the prohibition.

The proposed amendment to §65.267 would also alter subsection (e) to remove the provision that prohibits the issuance of a nonresident trapping permit to a resident of a state that does not allow Texas residents to trap raptors in that state. Only four states do not allow nonresidents to trap raptors (Alaska, Connecticut, Vermont, and West Virginia). Staff have determined that in the interests of streamlining the permit process, the provision is no longer necessary.

The proposed amendment to §65.270, concerning Notification, Reporting, and Recordkeeping Requirements, would alter subsection (f) to clarify requirements for falconers licensed in another state who relocate to Texas. Under Parks and Wildlife Code, §49.003, a person in possession of a raptor under a license issued by another state who intends to establish residency in this state must apply to the department for a falconry permit not later than the 10th day after the date the person first moves a raptor into the state. Under current rule (§65.270(f)), a person who relocates to Texas and holds the valid equivalent of a Texas falconry permit issued by another state, territory, or tribe may retain raptors the person lawfully possesses; however, the person is required to submit an application for the appropriate Texas permit within 30 days of relocation to this state. The proposed amendment would make the regulatory timeframe consistent with the statutory requirement for permit application; clarify that a person who has complied with these provisions may practice falconry, including hunting, in the interim while waiting for the issuance of a Texas falconry permit; however, the person must purchase a nonresident hunting license if the person hunts by means of falconry in Texas.

Matt Reidy, Wildlife Biologist, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rules.

Mr. Reidy also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer rules that enhance enforcement and compliance.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an

agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed amendments will not impose any direct adverse economic effects on small businesses, micro-businesses, or persons required to comply. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 49, which authorizes the commission to prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors, time and area from which raptors may be taken or captured, and species that may be taken or captured; provide standards for possessing and housing raptors held under a permit; prescribe annual reporting requirements and procedures; prescribe eligibility requirements and fees for and issuance of any falconry, raptor propagation, or nonresident trapping permit; §61.054, which requires the commission to specify the means or method that may be used to hunt, take, or possess game animals, game birds, or aquatic animal life; and Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 49, 61, and 67.

§65.264. *Permit Application Requirements.*

- (a) (No change.)
- (b) Educational or school programs may not be used to satisfy the experience requirements of paragraphs (1) - (4) of this subsection.
 - (1) (No change.)
 - (2) An applicant for a general falconry permit must be at least 16 years of age.
 - (A) (No change.)
 - (B) An application for a general permit must be accompanied by a signed attestation from the applicant's sponsor, who must be a general or master falconer, that the applicant has maintained [~~to include capture from the wild~~], trained, flown (which may include releasing to the wild) and hunted with raptors ~~trapped from the wild by the applicant~~ in the applicant's possession for at least four months in each of at least two years during which the person has been permitted to

practice falconry. The trapping requirement of this subparagraph does not apply to a raptor trapped under the provisions of §65.271(e)(3) of this title (relating to Trapping).

(3) - (5) (No change.)

(c) - (g) (No change.)

§65.267. *Permit Privileges and Restrictions.*

(a) Apprentice falconers.

(1) - (2) (No change.)

(3) An apprentice falconer may not:

(A) - (C) (No change.)

(D) take or possess:

(i) an eyass;

(ii) an imprinted raptor; or

~~[(iii) a hybrid that has not been sterilized; or]~~

[(iii) [(iv)] a raptor taken from the wild as a nestling.

(4) - (5) (No change.)

(b) - (d) (No change.)

(e) Nonresident trapping permittees.

~~[(1) The department will not issue a nonresident trapping permit to any person who is a resident of a state that does not allow Texas residents to trap raptors in that state.]~~

~~[(2)] A nonresident trapper shall not trap more than one raptor per year in this state.~~

(f) (No change.)

§65.270. *Notification, Reporting, and Recordkeeping Requirements.*

(a) - (e) (No change.)

(f) A person who relocates to Texas and holds the valid equivalent of a permit issued under this subchapter issued by another state, territory, or tribe may retain, on a temporary basis until notified by the department that a falconry permit is being issued or denied, raptors the person lawfully possesses pursuant to such permit; however, the person shall submit an application for the appropriate Texas permit within 10 [30] days of relocation to this state. The department will not issue a permit until the applicant's facilities have passed an inspection conducted by a department representative or designee. All inspections shall be in the presence of the permittee or the property owner (if the facility is located on property that is not owned by the permittee). A person who has complied with the requirements of this subsection and Parks and Wildlife Code, §49.003 may practice falconry, including hunting by means of falconry, in this state while awaiting the issuance of a Texas falconry permit, provided:

(1) the person is not otherwise legally prohibited from possessing or hunting with raptors; and

(2) if the person hunts by means of falconry, the persons possesses a nonresident hunting license that is valid for the species being hunted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2013.

TRD-201301367



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.1

The Texas Board of Criminal Justice proposes amendments to §159.1, concerning Substance Abuse Felony Punishment Facilities Eligibility Criteria. The proposed amendments are necessary to add that probationers under the age of 18 are not eligible to participate in the Substance Abuse Felony Punishment Facilities.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro-businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to comply with standards imposed by the federal Prison Rape Elimination Act.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §493.009 and Texas Code of Criminal Procedure Article 42.12, §14.

Cross Reference to Statutes: Texas Government Code §492.013.

§159.1. Substance Abuse Felony Punishment Facilities Eligibility Criteria.

(a) Offenders with a detainer filed by the United States Immigration and Customs Enforcement [(ICE)] or a felony detainer are not eligible to participate unless the jurisdiction that placed the detainer agrees not to seek custody of the defendant until after the program and continuum of care requirements have been completed. Exceptions may be made on a case-by-case basis. Offenders sentenced to a prison term and ordered to participate in a substance abuse felony punishment facility (SAFPF) program as a condition of community supervision shall be transferred to a SAFPf six to nine months prior to their projected release date on the prison sentence.

(b) Offenders shall be physically and mentally capable of uninterrupted participation in a rigorous, stressful, and confrontational therapeutic community program. Offenders with special medical or

psychological needs shall meet the eligibility criteria for the Special Needs SAFPf as defined in both the Community Justice Assistance Division's (CJAD's) *CJAD/SAFPF Procedure Manual* and the *Substance Abuse Treatment Operations Manual*.

(c) Offenders who have signs or symptoms of acute drug or alcohol withdrawal or who require detoxification are not eligible to participate until they have detoxified.

(d) Pretrial detainees are eligible to participate if ordered to do so pursuant to a drug court program established under Texas Health and Safety Code §§469.001 - 469.009 or a similar program. A pretrial detainee is not eligible to participate in the SAFPf program unless the detainee has been unsuccessfully discharged from an outpatient substance abuse treatment program and a residential substance abuse treatment facility, if available, as a condition of a pretrial order for the charges that are currently pending.

(e) Offenders convicted of offenses for which sex offender registration is required are not eligible to participate.

(f) Offenders under the age of 18 are not eligible to participate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301410

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 463-9693



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER E. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§9.203, 9.207, 9.208, 9.221, 9.251, 9.252, 9.256, 9.266, and 9.268, concerning definitions, certification and licensure, provider agreement, durable medical equipment, protecting individuals' personal funds, notice regarding personal funds, program provider-managed personal funds, department review of state survey agency findings, and termination of provider agreement; new §§9.225, 9.262, 9.263, and 9.270, concerning reporting incidents to DADS, trust

fund monitoring and audits, informal review and administrative hearing, and suspension of payments; and the repeal of §9.216, concerning renewal of provider agreement, and §9.225, concerning reporting abuse, neglect, and injuries of unknown source, in Chapter 9, Intellectual Disability Services—Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments and new sections is to describe reimbursement requirements for a program provider who purchases a wheeled mobility system for an individual or a major modification to a wheeled mobility system in compliance with Texas Human Resources Code, §32.0425.

The proposal also implements provisions of the Affordable Care Act concerning the suspension of Medicaid payments to a provider pending an investigation of a credible allegation of fraud.

In addition, the proposal requires a program provider to report to DADS incidents of alleged (Class I) physical abuse that caused or may have caused serious physical injury; alleged (Class I) sexual abuse of an individual; sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual; sexual activity involving an individual who is less than 18 years of age; the pregnancy of an individual; individual-to-individual aggression that results in serious physical injury; the death of an individual; and the inability to locate an individual if the individual's health or safety is at risk or the individual's location has been unknown for more than eight hours.

The proposal clarifies program provider responsibility for notifying an individual and legally authorized representative (LAR) of federal regulations concerning social security benefits with which the program provider must comply if the program provider is appointed by the Social Security Administration (SSA) as a representative payee for the individual. The proposal also clarifies the program provider's responsibility to provide a written notification to an individual or LAR concerning the individual's personal funds managed by the program provider. Further, the proposal requires that if an individual is discharged from a facility with no intention of returning and the personal funds managed by the program provider include conserved social security benefits, the program provider must return the conserved social security benefits to SSA or contact SSA regarding disbursement of the conserved social security benefits.

The proposal describes the process by which a program provider may request an informal reconsideration if DADS proposes to terminate a provider agreement.

The proposed amendments substitute respectful person-first language for outdated terminology in response to House Bill 1481, 82nd Legislature, Regular Session, 2011.

Section 9.216 is proposed for repeal to remove outdated rules regarding renewal of provider agreement from DADS rule base, because ICF/IID contracts are no longer limited to a term of up to twelve months but remain in effect until terminated. Section 9.225, which contains requirements for reporting abuse, neglect, and injuries of unknown source, is proposed for repeal to allow for new §9.225, which requires certain incidents to be reported to DADS by program providers that are exempt for licensure. Licensed entities must follow licensure rules for reporting incidents.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.203 adds definitions for "local authority," "occupational therapist (OT)," "physical therapist (PT)," "qualified intellectual disability professional (QIDP)," "qualified rehabilitation professional (QRP)," "SSI," and "wheeled mobility system"; amends the definitions of "campus-based facility," "facility," "ICF/ID Program," "ICF/MR Program," "individual," "LON (level of need)," "Long-term care plan," "provider agreement," and "vendor hold" to incorporate person-first respectful language; updates the definitions of "community center," "MRA (mental retardation authority)," "permanency planning review screen," "professional," "related condition," "TDHS," and "working day"; and deletes definitions of "NHIC" and "sanction team".

The proposed amendment to §9.207 updates terminology to reflect current usage and corrects a cross-reference.

The proposed amendment to §9.208 corrects a cross-reference and specifies that a provider agreement remains in effect until it is terminated.

The proposed repeal of §9.216 removes outdated rules regarding renewal of provider agreement.

The proposed amendment to §9.221 describes the process by which a program provider may receive payment for a wheeled mobility system or a major modification to a wheeled mobility system.

The proposed repeal of §9.225 removes outdated rules regarding reporting abuse, neglect, and injuries of unknown source.

Proposed new §9.225 describes requirements for reporting to DADS incidents of alleged physical abuse; alleged sexual abuse; sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual; sexual activity involving an individual who is less than 18 years of age; the pregnancy of an individual; individual-to-individual aggression that results in serious physical injury; the death of an individual; and the inability to locate an individual if the individual's health or safety is at risk of the individual's location has been unknown for more than eight hours.

The proposed amendment to §9.251 requires a program provider to comply with federal regulations if the SSA has appointed the program provider as an individual's representative payee.

The proposed amendment to §9.252 corrects references and requires a program provider to provide a written notice to an individual and the individual's legally authorized representative that the program provider must comply with federal regulations if the SSA has appointed the program provider as an individual's representative payee.

The proposed amendment to §9.256 corrects references and specifies that an account used by a program provider to manage an individual's personal funds must be titled to show that a fiduciary relationship exists between the individual and the program provider.

Proposed new §9.262 describes requirements for trust fund monitoring and audits by DADS and the process by which a program provider may request an informal review or administrative hearing to dispute the report of findings from monitoring or audit.

Proposed new §9.263 describes requirements for conducting an informal review and administrative hearing.

The proposed amendment to §9.266 clarifies that DADS is both the contracting and the state survey agency with regard to review of inspection or survey findings.

The proposed amendment to §9.268 corrects references and describes the process by which a program provider may request an informal reconsideration and an administrative hearing if DADS proposes to terminate a provider agreement.

Proposed new §9.270 provides that DADS suspends payments owed to a program provider if DADS is notified by the Health and Human Services Commission's Office of the Inspector General of receipt of reliable evidence that the program provider is involved in fraud or willful misrepresentation under the Medicaid program.

FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeal are in effect, enforcing or administering the amendments, new sections, and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeal may have an adverse economic effect on small businesses and micro-businesses, because payment may be withheld from an ICF/IID provider during a fraud investigation until the allegation is determined to be invalid. In addition, ICF/IID providers will be required to use a qualified rehabilitation professional to assess an individual's need for durable medical equipment, and such a professional may charge a higher fee than an occupational or physical therapist that an ICF/IID may have previously used. DADS is not able to estimate the amount of these impacts.

DADS estimates that the number of small businesses and micro-businesses subject to the proposed amendments, new sections, and repeal is 53 micro-businesses and 40 small businesses.

No alternatives were considered in determining how to accomplish the objectives of the proposed rules because the amendments are required by federal and state statute.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeal is that the state will not pay ICF/IID providers with Medicaid funds when the Office of Inspector General determines there is a credible allegation of fraud. The changes to the use of person-first language and preferred terms will promote the awareness that persons with disabilities should be treated with respect and dignity.

Mr. Adams anticipates that there will be an economic cost to persons who are required to comply with the amendments, new sections, and repeal, because payment may be withheld from an ICF/IID provider during a fraud investigation until the allegation is determined to be invalid. In addition, ICF/IID providers will be required to use a qualified rehabilitation professional to assess an individual's need for durable medical equipment, and such a professional may charge a higher fee than an occupational or physical therapist that an ICF/IID may have previously

used. DADS is not able to estimate the amount of these impacts. The amendments, new sections, and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Katharine McCormick at (512) 438-4541 in DADS Policy Development and Oversight Unit. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-11R22, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R22" in the subject line.

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §9.203

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.203. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Active treatment--Continuous, aggressive, consistent implementation of a program of habilitation, specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program. The program must be directed toward:

(A) the acquisition or maintenance of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status.

(2) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's IDT, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adult--A person who is 18 years of age or older.

(4) Affiliate--An employee or independent contractor of a provider applicant or a person with a significant financial interest in a provider applicant, including ~~but not limited to~~ the following:

(A) if the provider applicant is a corporation, then each officer, director, stockholder with an ownership of at least 5 percent, subsidiary, and parent company;

(B) if the provider applicant is a limited liability company, then each officer, member, subsidiary, and parent company;

(C) if the provider applicant is an individual, then the individual's spouse, each partnership and each partner thereof of which the individual is a partner and each corporation in which the individual is an officer, director, or stockholder with an ownership of at least 5 percent;

(D) if the provider applicant is a partnership, then each partner and parent company; or

(E) if the provider applicant is a group of co-owners under any other business arrangement, then each owner, officer, director, or the equivalent thereof under the specific business arrangement, and each parent company.

(5) Applicant--A person seeking enrollment in the ICF/IID [~~ICF/ID~~] Program or seeking admission to a facility.

(6) Applied income--The portion of an individual's cost of care that the individual is responsible for paying. The amount of an individual's applied income is determined by the policies and procedures authorized by the Health and Human Services Commission and depends on the individual's earned and unearned income.

(7) Assignment--The transfer of rights, interests, and obligations of the program provider agreement from the program provider to another person.

(8) Aversive stimulus--A stimulus that is unpleasant, noxious, startling, or painful; is applied after an inappropriate behavior; and is intended to suppress the inappropriate behavior.

(9) Behavior intervention plan--A written plan prescribing the systematic application of behavioral techniques regarding an individual that, at a minimum, contains:

(A) reliable and representative baseline data regarding the targeted behavior;

(B) a specific objective to decrease or eliminate the targeted behavior;

(C) a functional analysis of the events which contribute to or maintain the targeted behavior;

(D) detailed procedures for implementing the plan;

(E) ongoing, written quantitative data of the targeted behavior;

(F) written descriptions of incidents of the targeted behavior including the individual's actions and staff interventions;

(G) methods for evaluating plan effectiveness;

(H) procedures for making necessary plan revisions at least annually; and

(I) a fading process for one-to-one supervision, if the individual is assigned an LON 9.

(10) Budgeted amount--The amount of cash that may be disbursed to an individual at regular intervals; for example, [e.g.,] weekly, monthly, for discretionary spending without obtaining a sales receipt for the expenditure.

(11) Campus-based facility--A facility that is located on the grounds of a state supported living center or the ICF/IID Program component of Rio Grande State Center [state center with an intellectual disability residential component].

(12) CARE--DADS Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(13) Certified capacity--The maximum number of individuals who may reside in a facility, as set forth in the facility's provider agreement.

(14) CFR (Code of Federal Regulations)--The compilation of federal agency regulations.

(15) Community Center--A community center established under the THSC, Chapter 534, Subchapter A.

(16) Community program provider--A program provider acting on behalf of a facility that is not a campus-based facility.

(17) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm.

(18) DADS--The Department of Aging and Disability Services.

(19) Day--Calendar day, unless otherwise specified.

(20) Department--Department of Aging and Disability Services.

(21) Discharge--The absence, for a full day or more, of an individual from the facility in which the individual resides, if such absence is not during a therapeutic, extended, or special leave, as described in §9.226 of this subchapter (relating to Leaves).

(22) DPoC (directed plan of correction)--A plan developed by DADS sanction team that requires a program provider to take specified actions within specified time frames to correct the program provider's failure to meet one or more federal standards of participation (SoPs) or conditions of participation (CoPs) or lack of compliance with one or more state rules.

(23) Effortful task--A task directed by staff that requires physical effort by an individual performed after an inappropriate be-

havior, including required exercise, negative practice, and restitutional overcorrection.

(24) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

- (A) an individual needing emergency medical care;
- (B) an individual being removed from his residence by law enforcement;
- (C) an individual leaving his residence without notifying staff and not being located; and
- (D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(25) Excluded--Temporarily or permanently prohibited by a state or federal authority from participating as a provider in a federal health care program, as defined in 42 USC §1302a-7b(f).

(26) Exclusionary time-out--A procedure by which an individual is, after an inappropriate behavior, placed alone in an enclosed area in which positive reinforcement is not available and from which egress is physically prevented by staff until appropriate behavior is exhibited.

(27) Facility--An intermediate care facility for individuals ~~[persons]~~ with an intellectual disability or [a] related conditions ~~[condition]~~.

(28) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(29) Full day--A 24-hour period extending from midnight to midnight.

(30) Highly restrictive procedure--The application of an aversive stimulus, exclusionary time-out, physical restraint, a requirement to engage in an effortful task, or other technique with a similar degree of restriction or intrusion to manage an individual's inappropriate behavior.

(31) Hospice--An entity that is primarily engaged in providing care to terminally ill individuals and is approved by DADS to participate in the Medicaid Hospice Program in accordance with §30.30 of this title (relating to General Contracting Requirements).

(32) ICAP (Inventory for Client and Agency Planning)--A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports an individual needs.

(33) ICF/IID [~~ICF/ID~~] Program--The Intermediate Care Facilities for Individuals ~~[Persons]~~ with an Intellectual Disability Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(34) ICF/MR Program--~~ICF/IID~~ [~~ICF/ID~~] Program.

(35) ID/RC Assessment Form--A form used by DADS for LOC determination and LON assignment.

(36) IDT (interdisciplinary team)--A group of people assembled by the program provider who possess the knowledge, skills, and expertise to assess an individual's needs and make recommendations for the individual's IPP. The group includes the individual, LAR,

intellectual disability professionals and paraprofessionals and, with approval from the individual or LAR, other concerned persons.

(37) Individual--A person enrolled in the ICF/IID [~~ICF/ID~~] Program.

(38) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(39) IPP (individual program plan)--A plan developed by an individual's IDT that identifies the individual's training, treatment, and habilitation needs and describes services to meet those needs.

(40) IQ (intelligence quotient)--A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(41) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(42) LOC (level of care)--A determination given by DADS to an individual as part of the eligibility process based on data submitted on the ID/RC Assessment Form.

(43) Local authority--An entity to which the Health and Human Services Commission's authority and responsibility described in TSHC §531.002(11) has been delegated.

(44) ~~[(43)]~~ LON (level of need)--An assignment given by DADS to an individual upon which reimbursement for ICF/IID [~~ICF/ID~~] Program services is based. The LON assignment is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the ID/RC Assessment Form.

(45) ~~[(44)]~~ Long Term Care Plan--The plan required by THSC, §533.062, which is developed by DADS and specifies, in part, the capacity of the ICF/IID [~~ICF/ID~~] Program in Texas.

(46) ~~[(45)]~~ Major dental treatment--A dental treatment, intervention, or diagnostic procedure that:

- (A) has a significant recovery period;
- (B) presents a significant risk;
- (C) employs a general anesthetic; or

(D) in the opinion of the individual's physician, involves a significant invasion of bodily integrity that requires an incision or the extraction of bodily fluids that produces substantial pain, discomfort, or debilitation.

(47) ~~[(46)]~~ Major medical treatment--A medical, surgical, or diagnostic procedure or intervention that:

- (A) has a significant recovery period;
- (B) presents a significant risk;
- (C) employs a general anesthetic; or

(D) in the opinion of the individual's physician, involves a significant invasion of bodily integrity that requires an incision or the extraction of bodily fluids that produces substantial pain, discomfort, or debilitation.

(48) ~~[(47)]~~ Medical necessity--The need for a treatment decision that is essential to avoid adversely affecting an individual's mental or physical health or the quality of care rendered.

(49) [(48)] Mental retardation--Intellectual disability.

(50) [(49)] MRA (mental retardation authority)--A local authority [An entity to which the Health and Human Services Commission's authority and responsibility described in THSC, §531.002(11) has been delegated].

(51) [(50)] MR/RC--ID/RC Assessment Form.

(52) [(51)] Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(53) [(52)] Negative practice--A procedure in which an individual is required, after an inappropriate behavior, to repeatedly engage in an activity that is similar to the inappropriate behavior.

[(53) NHIC--Formerly, this term referred to the National Heritage Insurance Company; it now refers to the Texas Medicaid and Health Partnership.]

(54) Non-state operated facility--A facility for which the program provider is an entity other than DADS, such as a community center or private organization.

(55) Occupational therapist (OT)--A person licensed by the Texas Board of Occupational Therapy Examiners to practice occupational therapy, as defined in Texas Occupations Code §454.002(4).

(56) [(55)] PDP (person-directed plan)--A plan of services and supports developed under the direction of an individual or LAR with the support of a local authority [MRA] or program provider staff and other people chosen by the individual or LAR.

(57) [(56)] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(58) [(57)] Permanency Planning Review Screen--A screen in CARE that, when completed by a local authority [an MRA], identifies community supports needed to achieve an individual's permanency planning outcomes and provides information necessary for approval of the individual's initial and continued residence in a facility.

(59) [(58)] Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(60) [(59)] Personal hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a physical restraint if the individual resists the guidance or prompting.

(61) [(60)] Petty cash fund--Personal funds managed by a program provider that are maintained for individuals' cash expenditures.

(62) [(61)] Physical restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent

to an individual's body that the individual cannot remove easily, that restricts freedom of movement or normal access to an individual's body. This term includes a personal hold.

(63) Physical therapist (PT)--A person licensed by the Texas Board of Physical Therapy Examiners to practice physical therapy, as defined in Texas Occupations Code §453.001(4).

(64) [(62)] Pooled account--A trust fund account containing the personal funds of more than one individual.

(65) [(63)] Professional--A person who is licensed or certified by the State of Texas in a health or human services occupation or who meets DADS criteria to be a case manager, service coordinator, qualified intellectual disability professional, or certified [TDMHMR-certified] psychologist as described [defined] in §5.161 of this title (relating to TDMHMR-Certified Psychologist).

(66) [(64)] Program provider--An entity with whom DADS has a provider agreement.

(67) [(65)] Provider agreement--A written agreement between DADS and a program provider that obligates the program provider to deliver ICF/IID [ICF/ID] Program services.

(68) [(66)] Provider applicant--An entity seeking to participate as a program provider.

(69) [(67)] Psychoactive medication--Any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

(70) Qualified intellectual disability professional (QIDP)--A person with at least a bachelor's degree who has at least one year of experience working with persons with an intellectual disability or related conditions.

(71) Qualified rehabilitation professional (QRP)--A person who holds one or more of the following certifications in good standing:

(A) certification as an assistive technology professional or a rehabilitation engineering technologist issued by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA);

(B) certification as a seating and mobility specialist issued by RESNA; or

(C) certification as a rehabilitation technology supplier issued by the National Registry of Rehabilitation Technology Suppliers.

(72) [(68)] Related condition--Consistent with [As defined in] 42 CFR §435.1010 [§435.1009], a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual disability, and requires treatment or services similar to those required for individuals with intellectual disability;

(B) is manifested before the individual reaches [age] 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

(73) ~~[(69)]~~ Required exercise--A procedure in which an individual, after an inappropriate behavior, performs or is guided by staff to perform a series of physical movements that are incompatible with the inappropriate behavior.

(74) ~~[(70)]~~ Restitutional overcorrection--A procedure in which an individual is required to correct the consequences of an inappropriate behavior by performing a task that improves the individual's environment.

(75) ~~[(71)]~~ Sales receipt--A written statement issued by the seller that includes:

- (A) the date it was created; and
- (B) the cost of the item or service.

~~[(72) Sanction team--A group of professionals assembled and employed by DADS that is overseen by the Health and Human Services Commission to ensure consistency in its determinations.]~~

(76) ~~[(73)]~~ Separate account--A trust fund account containing the personal funds of only one individual.

(77) ~~[(74)]~~ Specially constituted committee--~~A [The] committee designated by the program provider in accordance with 42 CFR §483.440(f)(3) that consists of staff, LARs, individuals (as appropriate), qualified persons who have experience or training in contemporary practices to change an individual's inappropriate behavior, and persons with no ownership or controlling interest in the facility. The committee is responsible, in part, for reviewing, approving, and monitoring individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to individuals' safety and rights.~~

(78) SSI--Supplemental Security Income.

(79) ~~[(75)]~~ State-operated facility--A facility for which DADS is the program provider.

(80) ~~[(76)]~~ TAC (Texas Administrative Code)--A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(81) ~~[(77)]~~ TDHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, except in [unless] the context of [concerns] Medicaid eligibility it refers to [Medicaid eligibility was formerly the responsibility of TDHS; it now is the responsibility of] the Health and Human Services Commission.

(82) ~~[(78)]~~ THSC (Texas Health and Safety Code)--Texas statutes relating to health and safety.

(83) ~~[(79)]~~ Third Party--An individual, entity, or program other than DADS or the program provider, that is or may be liable to pay all or part of the expenditures for ICF/IID [ICF/ID] Program services, including:

(A) a commercial insurance company offering health or casualty insurance to individuals or groups (including both experience-rated insurance contracts and indemnity contracts);

(B) a profit or nonprofit prepaid plan offering either medical services or full or partial payment for services; and

(C) an organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any similar organization offering these payments or services, including self-insured and self-funded plans.

(84) ~~[(80)]~~ Trust fund account--An account at a financial institution in the program provider's control that contains personal funds.

(85) ~~[(81)]~~ Unclaimed personal funds--Personal funds managed by the program provider that have not been transferred to the individual or LAR within 30 days after the individual's discharge.

(86) ~~[(82)]~~ Unidentified personal funds--Personal funds managed by the program provider for which the program provider cannot identify ownership.

(87) ~~[(83)]~~ USC (United States Code)--A compilation of statutes enacted by the United States Congress.

(88) ~~[(84)]~~ Vendor hold--Temporary suspension of ICF/IID [ICF/ID] payments from DADS to a program provider.

(89) Wheeled mobility system--An item of durable medical equipment that is a customized, powered, or manual mobility device or a feature or component of the device, including the following:

- (A) seated positioning components;
- (B) powered or manual seating options;
- (C) specialty driving controls;
- (D) multiple adjustment frame;
- (E) nonstandard performance options; and
- (F) other complex or specialized components.

(90) ~~[(85)]~~ Working day--Any day except a Saturday, a Sunday, or a legal holiday listed in Texas Government Code §662.021. [A day when an MRA's administrative offices are open.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2013.

TRD-201301320

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 438-4466

◆ ◆ ◆

DIVISION 2. PROVIDER ENROLLMENT

40 TAC §9.207, §9.208

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive

commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.207. Certification and Licensure.

(a) To obtain a provider agreement under §9.208 [~~§419.208~~] of this division [~~title~~] (relating to Provider Agreement), a provider applicant whose application for enrollment is approved must receive licensure under THSC, Chapter 252, if applicable, and certification as an ICF/IID [~~ICF/MR~~] by DADS [~~the state survey agency~~] within 270 days from the date DADS [~~the department~~] approves the application, except as provided in subsection (b) of this section.

(b) DADS [~~The department~~] may, for good cause, grant an extension of the 270 day period described in subsection (a) of this section for a period of time to be determined by DADS [~~the department~~] if a provider applicant submits to DADS [~~the department~~] a written request for an extension, including supporting documentation, prior to the expiration of the 270 day period. For purposes of this subsection, good cause includes, but is not limited to:

(1) construction of the facility is delayed for causes beyond the provider applicant's control, such as a natural disaster;

(2) DADS [~~the state survey agency~~] is unable to make an on-site visit to the facility within the 270 day period, through no fault of the provider applicant; or

(3) construction of the facility is delayed because of litigation regarding the construction or operation of the facility.

(c) DADS does [~~The department will~~] not enter into a provider agreement with a provider applicant who does not obtain licensure and certification in accordance with this section.

§9.208. Provider Agreement.

(a) DADS enters [~~The department will enter~~] into a provider agreement only with a provider applicant that has received licensure under THSC, Chapter 252, if applicable, and certification by DADS [~~the state survey agency~~] in accordance with §9.207 [~~§419.207~~] of this division [~~title~~] (relating to Certification and Licensure).

(b) The effective date of a [~~an initial~~] provider agreement is the effective date of certification by DADS [~~the state survey agency~~].

(c) A provider agreement remains in effect until it is terminated.

~~[(e) Except as provided in subsection (d) of this section, the term of an initial provider agreement is the certification period of the facility set by the state survey agency; not to exceed twelve months.]~~

~~[(d) For good cause, the department may make the term of an initial provider agreement for less than the certification period of the facility set by the state survey agency.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

40 TAC §9.216

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.216. Renewal of Provider Agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. PROVIDER SERVICE REQUIREMENTS

40 TAC §9.221, §9.225

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and

plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.221. Durable Medical Equipment.

(a) A program provider that ~~who~~ arranges for durable medical equipment for an individual residing in the facility must ensure that:

(1) ~~[ensure that]~~ the individual receives the equipment prescribed;~~;~~

(2) the equipment fits properly, if applicable;~~;~~ and

(3) the individual's caregivers, as appropriate, receive instruction regarding the equipment's use;~~;~~ and

~~{(2) document compliance with the requirements of paragraph (4) of this section in the individual's record.}~~

(b) To receive payment for a wheeled mobility system or for a major modification to a wheeled mobility system, a program provider must comply with paragraphs (1) - (5) of this subsection.

(1) The program provider must ensure that an occupational therapist or a physical therapist:

(A) conducts a clinical assessment of the individual receiving the wheeled mobility system;

(B) documents in detail the medical need for a specific wheeled mobility system and all necessary accessories, as determined during the clinical assessment; and

(C) signs and dates the written assessment.

(2) The program provider must ensure that a QRP who is directly employed by or contracting with the program provider:

(A) is present for and directly involved in the clinical assessment of the individual described in paragraph (1) of this subsection;

(B) is not the same person who conducts the clinical assessment described in paragraph (1) of this subsection;

(C) is present when the wheeled mobility system is delivered, directs the fitting of the system, and ensures that the system is appropriate for the individual; and

(D) verifies that the wheeled mobility system functions correctly for the individual.

(3) The program provider must receive prior authorization to obtain a wheeled mobility system for an individual by submitting the following documentation to DADS in accordance with instructions issued by DADS:

(A) a prescription, signed and dated by a physician, that describes in detail the wheeled mobility system, including all necessary components, needed by the individual;

(B) the clinical assessment described in paragraph (1) of this subsection; and

(C) documentation that a QRP was present for and involved in the clinical assessment of the individual.

(4) The program provider must submit to DADS, in accordance with instructions issued by DADS, documentation that a QRP conducted the activities described in paragraph (2)(C) and (D) of this subsection.

(5) The program provider must maintain a copy of the documentation described in paragraphs (3) and (4) of this subsection in the individual's record.

§9.225. Reporting Incidents to DADS.

(a) In this section, "serious physical injury" is defined as in Chapter 711 of this title (relating to Investigations in DADS and DSHS Facilities and Related Programs).

(b) A program provider that, in accordance with THSC §252.003, is exempt from licensure under THSC §252.031 must report the following incidents to DADS Consumer Rights and Services at 1-800-458-9858 within one hour after suspecting or learning of the incident:

(1) alleged (Class I) physical abuse of an individual, as defined in Chapter 711 of this title, that caused or may have caused serious physical injury;

(2) alleged (Class I) sexual abuse of an individual, as defined in Chapter 711 of this title;

(3) sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual;

(4) sexual activity involving an individual who is less than 18 years of age;

(5) the pregnancy of an individual;

(6) individual-to-individual aggression that results in serious physical injury;

(7) the death of an individual; and

(8) the inability to locate an individual if:

(A) the individual's health or safety is at risk; or

(B) the individual's location has been unknown for more than eight hours.

(c) Within five working days after making a report described in subsection (b) of this section, the program provider must:

(1) conduct a thorough investigation of the incident; and

(2) send a written investigation report on Form 3613A, Provider Investigation Report, to DADS Consumer Rights and Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466

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40 TAC §9.225

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.225. *Reporting Abuse, Neglect, and Injuries of Unknown Source.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. PERSONAL FUNDS

40 TAC §§9.251, 9.252, 9.256, 9.262, 9.263

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.251. *Protecting Individuals' Personal Funds.*

(a) A program provider must implement this division according to the generally accepted accounting principles of the American Institute of Certified Public Accountants.

(b) A program provider must develop and implement written policies and procedures regarding personal funds that protect the financial interest of an individual [individuals] and, at a minimum, require the program provider:

(1) to instruct an individual [individuals] in handling personal funds consistent with the individual's [individuals'] abilities and understanding; and

(2) to allow an individual [individuals] to hold and manage [their] personal funds to the extent of the individual's [their] abilities; and

(3) to comply with 20 CFR 404, Subpart U, and 20 CFR 416, Subpart F, if the Social Security Administration has appointed the program provider as the representative payee.

(c) A program provider must reimburse an individual [individuals] for personal funds lost or stolen while the funds are under the program provider's control.

§9.252. *Notice Regarding Personal Funds.*

(a) At the time of admission to a facility, and if changes to services or charges occur, a program provider must provide each individual or LAR with written notification containing the following information:

(1) a written explanation of §9.253(d) [§419.253(d)] and (e) of this division [title] (relating to Determining Management of Personal Funds), which describe who may manage personal funds;

(2) a list of items and services included in the program provider's ICF/IID [ICF/MR] Program reimbursement rate for which the individual will not be charged;

(3) a list of items and services for which the individual may be charged;

(4) a statement that the individual or LAR may have the Social Security Administration appoint a representative payee to receive the individual's federal benefits in accordance with 20 CFR 404, Subpart U, and 20 CFR [Part] 416, Subpart F;

(5) a statement that, if the Social Security Administration has appointed the program provider as the representative payee for an individual's social security benefits, the provider must comply with 20 CFR 404, Subpart U, and 20 CFR 416, Subpart F;

(6) [(5)] a statement that, if the program provider manages the individual's personal funds, the program provider will make available the individual's personal funds record, as described in §9.256(h) [§419.256(h)] of this division [title] (relating to Program[-]Provider-Managed Personal Funds), upon the request of the individual or LAR within 72 hours after receiving a [the] request for a copy of the personal funds record from the individual or LAR; and

(7) [(6)] a statement that, at the request of the individual or LAR to withdraw all personal funds managed by the program provider, or if the individual is discharged [or transferred] from the facility with no intention of returning, the program provider will disburse the individual's personal funds to the individual or LAR within 30 days after the request or discharge, if the program provider manages the individual's personal funds.

(b) If, at the time of an individual's discharge from a facility with no intention of returning, an individual's personal funds managed by the facility include conserved social security benefits, a program provider must:

(1) return the funds to the Social Security Administration; or

(2) contact the Social Security Administration regarding disbursement of the conserved social security benefits.

§9.256. *Program Provider-Managed Personal Funds.*

(a) Accounting for personal funds. If a program provider manages personal funds, the program provider must comply with this section and ensure that:

(1) a complete accounting of personal funds entrusted to the program provider is maintained;

(2) personal funds are not commingled with program provider funds or the funds of any person other than another individual for whom the program provider manages personal funds; and

(3) personal funds are only expended for the individual's use and benefit and in a manner and for purposes determined to be in the individual's best interest.

(b) Account requirements [Requirements]. A program provider must manage personal funds in a trust fund account.

(1) The program provider may manage personal funds in a pooled account or a separate account. If the program provider chooses a pooled account, an individual may request and receive a separate account. The program provider may also maintain some personal funds in a petty cash fund.

(2) Trust fund accounts must be insured under federal or state law.

(3) The program provider must retain all statements from financial institutions regarding trust fund accounts.

(4) The program provider must reconcile such statement with the account ledger as described in subsection [subsections] (c)(1)(A) and [(e)](2)(A) of this section and personal ledger as described in subsection (h)(1)(F) of this section within 30 days after receiving such statement.

(c) Types of accounts [Accounts].

(1) Pooled accounts. If a program provider manages personal funds in a pooled account, the program provider must:

(A) maintain an account ledger that separately identifies each financial transaction, including:

(i) the name of the individual for whom the transaction was made;

(ii) the date and amount of the transaction, including interest; and

(iii) the balance after the transaction;

(B) title the account "Trustee (Program provider's Name), Individuals' Trust Fund Account" or a similar title that shows a fiduciary relationship exists between an individual and the program provider;[""] and

(C) if the personal funds of Medicaid and private-pay individuals are pooled, obtain a signed, dated statement from private pay individuals allowing the program provider to release financial information to DADS [the department, TDHS], [Texas] Health and Human Services Commission, Texas Attorney General's Medicaid Fraud Control Unit, and US Department of Health and Human Services.

(2) Separate accounts [Accounts]. If a program provider manages personal funds in a separate account, the program provider must:

(A) maintain an account ledger that identifies each financial transaction, including:

(i) the date and amount of the transaction, including interest; and

(ii) the balance after the transaction; and

(B) title the account "[Trustee] (Program Provider's Name), (Individual's Name) Trust Fund Account" or a similar title that shows a fiduciary relationship exists between an individual and the program provider.

(d) Petty cash fund [Cash Fund]. If a program provider maintains some personal funds in a petty cash fund, the program provider must:

(1) set a limit on the amount maintained in the petty cash fund;

(2) set a limit on the amount of a single expenditure from the petty cash fund;

(3) maintain a petty cash fund ledger that includes:

(A) the date and amount of each transaction;

(B) the name of the individual for whom each transaction was made; and

(C) the balance after each transaction.

(e) Interest. If personal funds accrue interest, a program provider must prorate and distribute the interest earned to each participating individual.

(f) Depositing personal funds. A program provider must deposit in a trust fund account all funds that it receives on behalf of the individual. If the deposit slip documents deposits for more than one individual, the program provider must indicate on the deposit slip the amount allocated to each individual.

(g) Access to personal funds.

(1) An individual's IDT must, based on the individual's assessment described in §9.253 [§419.263] of this division [title] (relating to Determining Management of Personal Funds), determine:

(A) if there is a need for a budgeted amount and, if so, set the amount; and

(B) if there is a need to restrict the individual's use of personal funds and, if so, make a recommendation to the specially constituted committee.

(2) If the individual's IDT makes a recommendation to the specially constituted committee to restrict an individual's use of personal funds, the specially constituted committee's decision is documented, signed by the specially constituted committee members, and made a part of the individual's IPP.

(h) Personal funds record.

(1) A program provider must maintain a personal funds record for each individual that includes:

(A) the name of the individual;

(B) the name of the individual's LAR and representative payee, as applicable;

(C) the date of the individual's admission to the facility;

(D) the individual's budgeted amount;

(E) the account number and location of all accounts in which the individual's personal funds are managed;

(F) a personal ledger that includes the date and amount of each transaction and the balance after each transaction; and

(G) any contribution acknowledgment as described in §9.261 ~~§419.261~~ of this division ~~title~~ (relating to Contributions).

(2) The personal ledger reconciled in accordance with subsection (b)(4) of this section must not be less than zero. If reconciled balance is less than zero, the program provider must deposit in and credit to the individual's trust fund account the amount that increases such balance to zero.

(3) At least quarterly, and within 72 hours after receiving a request from the individual or LAR, the program provider must provide to the individual or LAR a copy of the individual's personal ledger.

(i) Documenting expenditures and deposits.

(1) Expenditures.

(A) Except as provided in subparagraph (C) of this paragraph, a program provider must retain a sales receipt for each expenditure.

(i) If a sales receipt documents an expenditure for more than one individual, the program provider must indicate on the sales receipt the amount allocated to each individual.

(ii) If a sales receipt does not include the specific item or service purchased or the name of the seller, the program provider must attach such documentation.

(B) The program provider must explain each expenditure to the individual and request that the individual sign the receipt. If the program provider determines that the individual does not understand the explanation, the individual does not sign the receipt, or the individual's signature is illegible, a witness to the expenditure must sign the receipt. The witness must not be responsible for managing personal funds or responsible for supervising persons performing such duties.

(C) A sales receipt is not required for an expenditure:

(i) if the program provider makes a purchase on behalf of an individual from a vending machine;

(ii) if an expenditure is within the individual's budgeted amount and the program provider obtains an acknowledgment signed by the individual indicating that the funds were received;

(iii) if the program provider releases funds in response to a written request in accordance with §9.257 ~~§419.257~~ of this division ~~title~~ (relating to Requests for Personal Funds from Trust Fund Accounts); or

(iv) if the program provider obtains written approval for alternative documentation from DADS ~~the department's Office of Medicaid Administration~~ before the expenditure is made.

(2) Deposits. Except for deposits made electronically, a program provider must retain a deposit slip issued by the financial institution for each deposit.

§9.262. Trust Fund Monitoring and Audits.

(a) DADS may periodically monitor a trust fund account to assure compliance with this section. DADS notifies a program provider of monitoring plans and gives a report of the findings to the program provider.

(b) DADS may, as a result of monitoring, refer a program provider to the Health and Human Services Commission Office of Inspector General (OIG) for an audit.

(c) The program provider must provide all records and other documents required by §9.256 of this division (relating to Program Provider-Managed Personal Funds) to DADS upon request.

(d) DADS provides the program provider with a report of the findings, which may include corrective actions that the program provider must take and internal control recommendations that the program provider may follow.

(e) To dispute the report of findings, the program provider may request:

(1) an informal review in accordance with §9.263(a) of this division (relating to Informal Review and Administrative Hearing); or

(2) an administrative hearing in accordance §9.263(b) of this division.

(f) If the program provider does not request an informal review or an administrative hearing and the report of findings requires corrective actions, the program provider must complete corrective actions within 60 days after receiving the report of findings.

(g) If the program provider does not complete corrective actions required by DADS within 60 days after receiving the report of findings, DADS may impose a vendor hold on payments due to the program provider under the provider agreement until the program provider completes corrective actions.

(h) If DADS imposes a vendor hold in accordance with subsection (g) of this section, the program provider may request an administrative hearing in accordance with §9.263(b)(5) of this division. If the failure to correct is upheld, DADS continues the vendor hold until the program provider completes the corrective actions.

§9.263. Informal Review and Administrative Hearing.

(a) Informal review.

(1) A program provider that disputes the report of findings described in §9.262(d) of this division (relating to Trust Fund Monitoring and Audits) may request an informal review. The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute. An informal review is conducted according to the following procedures:

(A) DADS must receive a written request for an informal review by United States (U.S.) mail, hand delivery, special mail delivery, or fax no later than 15 days after the date on the written notification of the report of findings described in §9.262(d) of this division.

(i) If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first working day after the 15th day is the final day the written request is accepted.

(ii) A request for an informal review that is not received by the stated deadline is not accepted.

(B) A program provider must submit a written request for an informal review:

(i) by U.S. mail to DADS Trust Fund Monitoring Unit, Attn: Manager, P.O. Box 149030, Mail Code W-340, Austin, Texas 78714-9030;

(ii) hand delivery or special mail delivery to 701 West 51st Street, Austin, Texas 78751-2321; or

(iii) by fax to (512) 438-3639.

(C) A program provider must, with its request for an informal review:

(i) submit a concise statement of the specific findings it disputes;
(ii) specify the procedures or rules that were not followed;
(iii) identify the affected cases;
(iv) describe the reason the findings are being disputed; and
(v) include supporting information and documentation that directly demonstrates that a disputed finding is not correct.

(D) DADS does not grant a request for an informal review that does not meet the requirements of this subsection.

(2) Upon receipt of a request for an informal review, the Trust Fund Monitoring Unit Manager coordinates the review of the information submitted.

(A) Additional information may be requested by DADS and must be received in writing by U.S. mail, hand delivery, special mail, or fax in accordance with paragraph (1)(B)(i) - (iii) of this subsection no later than 15 days after the date the program provider receives the written request for additional information. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first working day after the 15th day is the final day the additional information is accepted.

(B) DADS sends its written decision to the program provider by certified mail, return receipt requested.

(i) If the original findings are upheld, DADS continues the schedule of deficiencies and requirement for corrective action.

(ii) If the original findings are reversed, DADS issues a corrected schedule of deficiencies with the written decision.

(iii) If the original findings are revised, DADS issues a revised schedule of deficiencies including any revised corrective action.

(iv) If the original findings are upheld or revised, the program provider may request an administrative hearing in accordance with subsection (b) of this section.

(v) If the original findings are upheld or revised and the program provider does not request an administrative hearing, the program provider has 60 days from the date of receipt of the written decision to complete the corrective actions.

(I) If the program provider does not complete the corrective actions by that date, DADS may impose a vendor hold. If DADS imposes a vendor hold, the program provider may request an administrative hearing in accordance with subsection (b)(5) of this section.

(II) If the failure to correct is upheld, DADS continues the vendor hold until the program provider completes the corrective action.

(b) Administrative hearing.

(1) The program provider must submit a written request for an administrative hearing under this section to: HHSC Appeals Division, P.O. Box 149030, Mail Code W-613, Austin, Texas 78714-9030.

(2) The written request for a formal hearing must be received within 15 days after:

(A) the date on the written notification of the report of findings described in §9.262(d) of this division; or

(B) the program provider receives the written decision sent as described in subsection (a)(2)(B) of this section.

(3) An administrative hearing is conducted in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) No later than 60 days after a final determination is issued as a result of an administrative hearing requested by a program provider under §9.262(e)(2) of this division or subsection (a)(2)(B)(iv) of this section, the program provider must complete any corrective action required by DADS or be subject to a vendor hold on payments due to the program provider under the provider agreement until the program provider completes corrective action. If DADS imposes a vendor hold, the program provider may request an administrative hearing in accordance with paragraph (5) of this subsection. If the failure to correct is upheld, DADS continues the vendor hold until the program provider completes the corrective action.

(5) If DADS imposes a vendor hold under §9.262(g) of this division, subsection (a)(2)(B)(v) of this section, or paragraph (4) of this subsection, the program provider may request an administrative hearing within 15 days after receiving notice of the correction failure and the vendor hold. The administrative hearing is limited to the issue of whether the program provider completed the corrective action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens

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**DIVISION 7. PROVIDER AGREEMENT
SANCTIONS**

40 TAC §§9.266, 9.268, 9.270

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.266. *DADS [Department] Review of Inspection or [State] Survey [Agency] Findings.*

(a) DADS [~~The department~~] may impose a directed plan of correction (DPoC) on one or more of a program provider's facilities, a vendor hold on payments due under one or more of a program provider's agreements, or both if:

(1) the program provider is determined as a result of an inspection or survey [~~by the state survey agency~~] to not meet one or more of the federal ICF/IID [~~ICF/MR~~] standards of participation (SoPs) or conditions of participation (CoPs) and DADS [~~the sanction team~~] determines that the program provider's failure to meet such SoPs or CoPs resulted in or may result in serious injury to or death of an individual residing in the program provider's facility;

(2) the program provider is determined as a result of an inspection or survey [~~by the state survey agency~~] to not meet one or more of the SoPs and DADS [~~the sanction team~~] determines that the program provider's failure to meet such SoPs indicates a pervasive lack of active treatment;

(3) the program provider is determined as a result of an inspection or survey [~~by the state survey agency~~] to not meet one or more of the SoPs or CoPs or to not be compliant with one or more state rules applicable to the ICF/IID [~~ICF/MR~~] program and DADS [~~the sanction team~~] determines, based on its review of previous inspection or survey [~~state survey agency~~] findings related to the program provider, that the program provider's failure to meet the SoPs or CoPs or noncompliance [~~non-compliance~~] with state rules indicates:

(A) a pattern of error in a particular discipline, such as nursing or psychology; or

(B) deficient program provider practices or procedures, such as inadequate staffing or insufficient staff training; or

(4) it is determined:

(A) [~~by the state survey agency~~] during a follow-up certification review that the program provider failed to correct previous findings of the survey and did not meet one or more additional SoPs, CoPs, or state rules; and

(B) [~~by the sanction team~~] that the program provider's continued failure to meet the SoPs, CoPs, or state rules indicates significant deficient practices that resulted in or may result in serious injury to or death of an individual residing in the program provider's facility.

(b) When making a determination in accordance with subsection (a) of this section, DADS reviews [~~the sanction team will review~~] the inspection or survey [~~state survey agency's~~] reports documenting the program provider's failure to meet the SoPs, CoPs, or state rules, which may include a description of:

(1) the situation or occurrence that led to the deficiency;

(2) the program provider's response to the situation or occurrence; and

(3) the program provider's practices at the time of the situation or occurrence.

(c) DADS imposes [~~The department will impose~~] a DPoC or vendor hold in accordance with subsection (a) of this section only on a facility that has been determined [~~by the state survey agency and the sanction team~~] to meet the criteria described in subsection (a)(1), (2), (3), or (4) of this section.

§9.268. Termination of Provider Agreement.

(a) DADS [~~The department~~] may terminate a provider agreement:

(1) for reasons set forth in federal or state laws, rules or regulations, including this subchapter and 1 TAC Chapter 355 (relating to Reimbursement Rates);

(2) if the program provider fails to comply with the terms of the provider agreement, including failure of the program provider's facility to maintain ICF/IID Program certification [~~as an ICF/MR~~];

(3) if federal or state laws, rules or regulations are enacted, amended, repealed or judicially interpreted so as to render the fulfillment of the provider agreement by either the program provider or DADS [~~the department~~] unfeasible or impossible, and DADS [~~the department~~] and program provider cannot agree upon amendments to the provider agreement necessary to comply with such changes to laws, rules or regulation;

(4) if a certification made by the program provider in the provider agreement is false or becomes inaccurate;[-]

(5) if DADS [~~the department~~] determines that a program provider has failed to implement a DPoC in accordance with §9.267 of this division [~~§419.267~~] (relating to Directed Plan of Correction and Vendor Hold Based on [~~On~~] State Survey Agency Findings); or

(6) if, during an 18-month period, three vendor holds are imposed on payments due under that provider agreement in accordance with §9.267 of this division [~~§419.267~~] (relating to Directed Plan of Correction and Vendor Hold Based On State Survey Agency Findings).

(A) A vendor hold may be used to terminate a provider agreement in accordance with this paragraph regardless of whether there was an actual interruption of payment to the program provider.

(B) A vendor hold may be used no more than once to terminate a provider agreement in accordance with this paragraph.

(b) If DADS [~~the department~~] proposes to terminate a provider agreement, DADS [~~the department~~] may place a vendor hold on payments due to the program provider under the provider agreement until:

(1) an audit of the program provider's financial records, conducted in accordance with §9.269 [~~§419.269~~] of this division [~~title~~] (relating to Audits) is completed;

(2) a review of the program provider's fiscal accountability cost report, conducted in accordance with 1 TAC §355.452 (relating to Cost Reporting Procedures) and 1 TAC §355.457 (relating to Cost Finding Methodology [~~Fiscal Accountability~~]) is completed; and

(3) any amounts owed to DADS [~~the department~~] as a result of the audit and review are resolved.

(c) If DADS proposes to terminate a provider agreement, DADS sends a written notice of the proposed termination to the program provider. The program provider may submit a written request for an informal reconsideration (IR) in accordance with paragraph (1) of this subsection.

(1) DADS considers a request for an IR only if the program provider submits the request and any supporting documentation the program provider wants DADS to consider to DADS, within seven days after receiving DADS notice of proposed termination.

(2) If the program provider submits a timely request for an IR, DADS provides a written response to the program provider affirming or reversing the proposed termination.

(3) If the program provider does not submit a timely request for an IR, or DADS affirms the proposed termination, DADS proceeds with the proposed termination in accordance with subsection (d) of this section.

(d) If DADS proposes to terminate a provider agreement after the process described in subsection (c) of this section, DADS sends a second written notice of the proposed termination to the program provider. The program provider may submit a written request for an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing).

(e) If DADS proposes to terminate a provider agreement and the program provider requests an administrative hearing in accordance with 1 TAC §357.484, DADS does not terminate the provider agreement before the completion of the administrative hearing, but payments to the program provider may be withheld by DADS.

(1) If the final decision of the administrative hearing is favorable to DADS or the program provider does not make a timely request for an administrative hearing, then payments withheld will not be made by DADS to the program provider.

(2) If the final decision is favorable to the program provider, then DADS pays amounts withheld and resumes payment under the provider agreement.

(f) [(e)] If DADS terminates a provider agreement [is terminated by the department], DADS does [the department will] not enter into a new provider agreement with the program provider until at least two days have elapsed from the effective date of the termination.

(g) [(d)] DADS [The department] may enter into a new provider agreement with a program provider that has had its provider agreement terminated if:

(1) within 30 days after termination, the program provider requests a new provider agreement; and

(2) within 90 days after termination, DADS [the department or the state survey agency, as appropriate,] determines that all deficiencies or actions that led to termination of the provider agreement have been corrected and the program provider is otherwise qualified to enter into a provider agreement.

(h) [(e)] In determining whether to enter into a new provider agreement with a program provider that has had its provider agreement terminated, DADS considers [in accordance with subsection (e) of this section, the department will consider]:

(1) the nature, severity, and pervasiveness of the deficiencies or actions that led to termination of the provider agreement; and

(2) the facility's or the program provider's history of compliance with ICF/IID [ICF/MR] Program requirements.

(i) [(f)] The term and effective date of a new provider agreement entered into in accordance with subsection (f) [(e)] of this section will be determined by DADS [the department].

(j) [(g)] If DADS [the department] determines not to enter into a new provider agreement:

(1) a local authority [an MRA] must assist DADS [the department] in relocating individuals who choose to move from the facility; and

(2) the program provider must assist DADS [the department] or the local authority [MRA] in relocating individuals who choose to move from the facility.

§9.270. Suspension of Payments.

(a) DADS suspends payments owed to a program provider under a provider agreement if DADS is notified by Health and Human Services Commission Office of Inspector General (OIG) that payments must be withheld because of receipt of reliable evidence involving fraud or willful misrepresentation under the Medicaid Program in accordance with 42 CFR §455.23(a).

(b) DADS suspends payments in accordance with subsection (a) of this section until:

(1) OIG notifies DADS that it must pay amounts suspended and resume payment under the provider agreement; or

(2) OIG notifies DADS that it must terminate the provider agreement in accordance with §9.268 of this division (relating to Termination of Provider Agreement).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 2, 2013.

TRD-201301326

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 19, 2013

For further information, please call: (512) 438-4466

◆ ◆ ◆

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

DIVISION 2. PROCEDURES GOVERNING PERSONS SUBJECT TO 18 U.S.C. §1033 AND §1034

28 TAC §§1.520 - 1.530

Proposed new §§1.520 - 1.530, published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7858), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301411

◆ ◆ ◆

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER A. PROCUREMENT

16 TAC §§401.101 - 401.104

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§401.101 - 401.104, concerning Procurement, without changes to the proposed text as published in the January 25, 2013, issue of the *Texas Register* (38 TexReg 344). The adopted amendments to these sections update the rules to conform to applicable statutes and regulations, as well as to make grammatical changes to improve clarity of language within these sections.

Adopted amendments to §401.101(a), Definitions, remove the definition of the terms "emergency" and "emergency purchase," combining these concepts into the definition of the term "emergency procurement" to provide added clarity. Additional adopted amendments to this subsection include a revision of the terms "nonresident bidder or proposer" and "proprietary product" to clarify those definitions.

Adopted amendments to §401.101(c), Procurement method, change "printing services," "emergency purchase" and "proprietary purchase" to improve clarity regarding the applicable procedures followed by the Commission relating to those purchase categories.

Adopted amendments to §401.101(e), Formal competitive solicitations, provide additional clarity regarding the choice of solicitation process and the potential for negotiations between the commission and a proposer. The adopted amendments to §401.101(e) also add the ability of the agency to make notification of contract award by email and eliminate the requirement that certified mail notification have a return receipt requested. Confirmation of delivery to a designated facsimile number or email address for the receipt of such correspondence will constitute conclusive proof that delivery was made.

Adopted amendments to §401.101(f), RFP, add new paragraph (5), clarifying that the agency may award a contract to multiple vendors selected using a single solicitation where necessary to meet the agency's needs for a particular item or service. The remaining adopted amendments to §401.101 are general grammatical changes to improve clarity.

Adopted amendments to §401.102(b), concerning Protests of the Terms of a Formal Competitive Solicitation, clarify that some-

one who files a timely protest to a solicitation may have 10 calendar days to supplement that protest. Adopted amendments to §401.102(d) clarify the language regarding agency procedure when it receives a timely filed protest. Also, adopted amendments to §401.102(e) and (f) and new (i) allow the agency to serve notice of agency determinations regarding a protest to a solicitation by email. Other adopted amendments to §401.102 contain general grammatical changes intended to improve the clarity and readability of this section.

Adopted amendments to §401.103(b), concerning Protests of a Contract Award, add a clarification that someone who files a timely protest to a contract award has 10 calendar days to supplement that protest. Adopted amendments to §401.103(f) and (h) allow the agency to serve notice of agency determinations involving the protest of a contract award by email. Other adopted changes improve clarity within this section.

Additionally, adopted amendments to §401.104, concerning Contract Monitoring Roles and Responsibilities, make general grammatical changes intended to improve clarity and readability of this section.

The commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under the authority of Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also adopted under the authority of Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Texas Government Code, Chapter 466, Subchapter C. The following statute is affected by this proposal: Texas Government Code, §466.101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2013.

TRD-201301369

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: April 25, 2013

Proposal publication date: January 25, 2013

For further information, please call: (512) 344-5275



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER M. ADMINISTRATIVE PENALTIES

28 TAC §§34.1301 - 34.1308

The Texas Department of Insurance adopts new Subchapter M, §§34.1301 - 34.1308, concerning disciplinary and enforcement actions and administrative penalties. Sections 34.1301, 34.1302, and 34.1305 are adopted with nonsubstantive changes to the proposed text published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 627). Sections 34.1303, 34.1304, and 34.1306 - 34.1308 are adopted without changes.

REASONED JUSTIFICATION. This new subchapter is necessary to implement House Bill (HB) 1951, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. House Bill 1951 amends Government Code §417.010, concerning disciplinary and enforcement actions and administrative penalties for persons regulated by TDI through the State Fire Marshal's Office (SFMO).

The Sunset Commission's *Department of Insurance Report to the 82nd Legislature* (July 2011) made findings and recommendations related to the need for the SFMO to have the authority to enforce penalties against its licensees. One of the recommendations was that the SFMO have authority to enforce penalties against its licensees. The SFMO does not directly issue penalties against licensees. Instead, referrals for violations go through TDI's extensive enforcement process. TDI's enforcement section has established a penalty threshold to prioritize enforcement efforts. Many penalties the SFMO would recommend fall below this threshold. This allows many violators to go unsanctioned. Because of these findings, the Sunset Commission recommended that the Legislature require the commissioner of insurance to establish a penalty matrix for violations by SFMO licensees and to delegate enforcement authority to the SFMO.

Under §417.010 the commissioner by rule may delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties in accord with this section, on a person regulated under a law listed under Subsection (a) who violates that law or rule or order adopted under that law. Section 417.010 also states that the commissioner by rule shall adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty imposed is appropriate to the violation.

The new subchapter establishes the procedure and schedule of administrative penalties for violations committed by fire alarm, fire extinguisher, fire sprinkler, and fireworks licensees to ensure that the amount of the administrative penalty imposed is appropriate to the violation. Government Code §417.010(e) allows the state fire marshal to impose an administrative penalty without referring the violation to the department for commissioner action. The administrative penalties are described in Figures §34.1302(a) - (e). These penalties do not cover every potential violation of statute or code. The state fire marshal selected particular violations for the schedule of administrative penalties because of their frequency of occurrence and the limited subjectivity in determining a violation. The state fire marshal selected the administrative penalties in the penalty schedule fig-

ures based on average or typical factors in Government Code §417.010(c)(1) - (7). The state fire marshal may deviate from the penalty schedule by consent order. The state fire marshal also has the flexibility to refer a violation described in the schedule of administrative penalties to TDI's enforcement section. Violations referred to enforcement are not limited to the schedule of administrative penalties figures and may exceed those specified in this rule where Government Code §417.010(c)(1) - (7) and Insurance Code §84.022 factors warrant.

Section 34.1301 delegates authority to the state fire marshal and states the applicability of the administrative penalties. Section 34.1302 specifies which types of disciplinary and enforcement actions are delegated to the state fire marshal. The schedule of administrative penalties in §34.1302 includes fire alarm, fire extinguisher, fire sprinkler, and fireworks licensees regulated by the state fire marshal. Section 34.1303 states that a penalty under this subchapter may be combined with other administrative sanctions.

Section 34.1304 describes the notice of violation and penalty that the SFMO will provide the alleged licensee. Section 34.1305 states that the penalty must be paid or a hearing requested. The licensee has 30 days to either pay the penalty, demonstrate compliance, or request a hearing. The 30 days for the licensee to respond is longer than required by §417.010(f) and Insurance Code §84.042. The state fire marshal must approve the penalty by order. The order must include findings of fact and conclusions of law. Section 34.1306 describes the process for requesting a hearing and states that Chapter 2001 of the Government Code applies to proceedings conducted under this subchapter. Section 34.1306 also states that a contested case hearing may include other matters against the licensee. Section 34.1307 states that if a person fails to pay a penalty, the state fire marshal may seek additional sanctions or the attorney general may bring an action to collect the penalty. Finally, as required by Government Code §417.010(e), §34.1308 states that a licensee may dispute the penalty under Chapter 84 of the Insurance Code.

A change has been made to the description of the violation of 28 TAC §34.623(a) in Figure §34.1302(b). The description did not fully describe where a label must be applied. It is permissible for a label to be placed outside of a control panel, or if the system has no panel, in a permanent location.

In addition, nonsubstantive changes were made in §34.1301 and the figures in §34.1302(a), (b), (c), (d), and (e) to add commas, capitalize a lower case word, correct spelling, delete an unnecessary period, and to correct typographical errors.

A change has been made to §34.1305(a)(2) to clarify that the state fire marshal's ability to grant the licensee additional time to show compliance. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

HOW THE SECTIONS WILL FUNCTION. Section 34.1301 specifies the delegation of authority to the state fire marshal and states the applicability of the administrative penalties. Section 34.1302 specifies which types of disciplinary and enforcement actions are delegated to the state fire marshal. The schedule of administrative penalties in §34.1302 includes fire alarm, fire extinguisher, fire sprinkler, and fireworks licensees regulated by the state fire marshal. Section 34.1303 specifies that a penalty under this subchapter may be combined with other administrative sanctions. Section 34.1304 specifies the content of the notice of violation and penalty. Section 34.1305 states that the

penalty must be paid or a hearing requested. Section 34.1306 specifies the process for requesting a hearing. Section 34.1307 specifies the consequences for failure to pay a penalty. Section 34.1308 specifies that a licensee may dispute the penalty under Chapter 84 of the Insurance Code.

SUMMARY OF COMMENTS. The department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The new subchapter is adopted pursuant to Government Code §417.010 and Insurance Code §36.001. Government Code §417.010 requires the commissioner to adopt by rule a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty is appropriate to the violation. Further, the commissioner by rule shall delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties. The commissioner must specify which types of disciplinary and enforcement actions are delegated to the state fire marshal. The commissioner must also outline the process through which the state fire marshal may impose administrative penalties or take other disciplinary and enforcement actions.

Government Code §417.010 requires TDI to provide the schedule of administrative penalties to the public on request. The amount of an administrative penalty imposed must be based on the factors specified in §417.010(c). Section 417.010 also authorizes the state fire marshal to, in lieu of cancelling, revoking, or suspending a license or certificate of registration, impose on the holder of the license or certificate of registration an order directing the holder to cease and desist from a specified activity, pay an administrative penalty imposed under this section, or make restitution to a person harmed by the holder's violation of an applicable law or rule. Pursuant to §417.010, the state fire marshal is required to impose an administrative penalty under this section in the manner prescribed under Subchapter B, Chapter 84, Insurance Code. The state fire marshal may impose an administrative penalty under this section without referring the violation to TDI for commissioner action.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§34.1301. Imposition of Penalty.

(a) The commissioner delegates to the state fire marshal the authority to take disciplinary and enforcement action described in this subchapter.

(b) The state fire marshal may impose an administrative penalty as described in §34.1302 of this title (relating to Schedule of Administrative Penalties) against a person who violates:

- (1) a provision of Title 20, Insurance Code, including Chapter 6001, 6002, or 6003;
- (2) Occupations Code Chapter 2154; or
- (3) a rule appearing in Subchapter E, F, G, or H of this chapter (relating to Fire Extinguisher and Installation, Fire Alarm Rules, Fire Sprinkler Rules, and Storage and Sale of Fireworks, respectively).

(c) As used in this subchapter, the term "licensee" includes all persons licensed, registered, or otherwise regulated by Title 20, Insurance Code, or Occupations Code Chapter 2154.

(d) The state fire marshal may refer a violation of subsection (b)(1), (2), or (3) of this section to the Texas Department of Insurance,

Enforcement Section instead of imposing an administrative penalty under this subchapter. Sanctions under Insurance Code Chapters 82, 83, and 84, and Occupations Code Chapter 2154 are not restricted to the administrative penalty amounts under §34.1302 of this title.

(e) For violations described in §34.1302 of this title, the state fire marshal may enter into a consent order imposing an administrative penalty that deviates from this subchapter.

§34.1302. Schedule of Administrative Penalties.

(a) The Fire Extinguisher Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(a)

(b) The Fire Alarm Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(b)

(c) The Fire Protection Sprinkler Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(c)

(d) The Fireworks Indoor Retail Stand Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(d)

(e) The Fireworks Retail Stand Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(e)

§34.1305. Penalty to be Paid or Hearing Requested.

(a) No later than the 30th day after the date the licensee receives the notice of alleged violation and recommended administrative penalty, the licensee may:

(1) accept the department's determination and recommended administrative penalty;

(2) request an opportunity to show compliance with all requirements of all applicable law and rules, in which case the state fire marshal's office may grant the licensee an additional period in which to show compliance; or

(3) the licensee may request a hearing.

(b) If the licensee accepts the state fire marshal's office determination and agrees to pay the penalty, the state fire marshal by order must approve the determination.

(c) The state fire marshal order must include findings of fact and conclusions of law supporting the penalty, and must be delivered to the licensee by certified mail.

(d) The licensee must pay the administrative penalty no later than the 30th day after the date of the state fire marshal's order.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2013.

TRD-201301358

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: April 24, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 221. DISTRIBUTION OF BOND PROCEEDS

34 TAC §§221.2 - 221.4

The Texas Public Finance Authority (Authority) adopts amendments to §§221.2 - 221.4, concerning the distribution of bond proceeds. The amendments are adopted without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1347) and will not be republished.

The amendments will make the definitions more clear and make conforming changes to align with current practices.

Government Code §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by the agency pursuant to Government Code, Chapter 2001. Sections 221.2 - 221.4 have been reviewed, and the Authority has determined that reasons for adopting the sections continue to exist because the Authority still provides financing through the issuance of public securities as directed by the legislature and these rules assist client agencies in presenting their requests for financing to the Authority. A rule review notice for all sections of Chapter 221 is published in the "Review of Agency Rules Section" in this issue of the *Texas Register*.

No comments were received regarding the proposed amendments.

The amendments are adopted under the authority of Texas Government Code, Chapter 1232, which authorizes the Texas Public Finance Authority to adopt rules necessary to implement the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2013.

TRD-201301371

Susan Durso

General Counsel

Texas Public Finance Authority

Effective date: April 25, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-3143



CHAPTER 225. MASTER LEASE PURCHASE PROGRAM

34 TAC §225.1, §225.3

The Texas Public Finance Authority (Authority) adopts amendments to §225.1 and §225.3, concerning the Master Lease Purchase Program (Program). The amendments are adopted without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1349) and will not be republished.

The amendments will clarify the purpose of the chapter and conform the definitions to current practices.

Government Code §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by the agency pursuant to Government Code, Chapter 2001. Sections 225.1 and §225.3 have been reviewed, and the Authority has determined that reasons for adopting the sections continue to exist because the Authority still provides financing for projects through the Program as directed by the legislature and these rules assist client agencies in utilizing the Program. A rule review notice for all sections of Chapter 225 is published in the "Review of Agency Rules Section" in this issue of the *Texas Register*.

No comments were received regarding the proposed amendments.

The amendments are adopted under the authority of Texas Government Code, Chapter 1232, which authorizes the Texas Public Finance Authority to adopt rules necessary to implement the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2013.

TRD-201301372

Susan Durso

General Counsel

Texas Public Finance Authority

Effective date: April 25, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-3143



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.8

The Texas Board of Criminal Justice adopts amendments to §151.8, concerning Advisory Committees, without changes to the proposed text as published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9758).

The adopted amendments are necessary to extend the abolishment dates for the advisory committees.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §2110.005 and §2110.008.

Cross reference to statutes: Texas Government Code §§492.006, 492.013, 493.003, 510.011 - 510.014, and Chapter 2110; and Texas Health and Safety Code §614.002 and §614.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301420

Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Effective date: April 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 463-9693



CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.51

The Texas Board of Criminal Justice adopts amendments to §152.51, concerning Authorized Witnesses to the Execution of an Offender Sentenced to Death, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9889).

The adopted amendments are necessary to establish that a witness must be 18 years of age or older, increase the number of victim witnesses, and permit surviving victim witnesses under certain circumstances.

No comments were received regarding the amendments.

The amendments are adopted under Texas Code of Criminal Procedure, art. 43.20.

Cross Reference to Statutes: Texas Government Code §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2013.

TRD-201301421
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Effective date: April 28, 2013
Proposal publication date: December 21, 2012
For further information, please call: (512) 463-9693



37 TAC §152.61

The Texas Board of Criminal Justice adopts amendments to §152.61, concerning Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails, with two capitalization changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9890).

The adopted amendments are necessary to include university, campus, and school district police departments in the group of law enforcement agencies to which the Texas Department of Criminal Justice may provide emergency response assistance.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §494.008.

Cross Reference to Statutes: Texas Government Code §492.013.

§152.61. *Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Assistance refers to Texas Department of Criminal Justice (TDCJ) resources provided to law enforcement agencies or departments, and non-agent private prisons or jails such as personnel, equipment, vehicles, horses, tracking pack or scent specific canines, and chemical agents.

(2) Emergency Situation is an event determined by a law enforcement agency that presents an immediate or potential threat to public safety if the TDCJ's assistance is not received. The situation will generally involve multiple offenders, an escape, or a hostage situation.

(3) Law Enforcement Agency or Department is defined as the Texas Department of Public Safety (DPS), including the Texas Rangers; a municipal police department; a county sheriff's department; a federal law enforcement agency; a university police department; a campus police department; or a school district police department.

(4) Non-Agent Private Prison or Jail is any privately operated or owned prison or jail in Texas that does not have a contract with the TDCJ to house TDCJ offenders.

(5) TDCJ Facility is any facility operated by or under contract with the TDCJ.

(b) Policy. It is the policy of the TDCJ to assist law enforcement agencies or departments requesting assistance in an emergency situation that presents an immediate or potential threat to public safety, such as apprehending an escapee of a municipal or county jail or a privately operated or federal correctional facility, if the TDCJ determines that providing assistance will not jeopardize the safety and security of the TDCJ and its personnel.

(c) Procedures.

(1) Request for Assistance.

(A) If a non-agent private prison or jail believes that an emergency situation has arisen, it must immediately notify the nearest law enforcement agency in order to qualify for the TDCJ's assistance. In the case of a non-agent private prison or jail that operates a facility holding county inmates, the facility must first notify the county sheriff in order to qualify for the TDCJ's assistance.

(B) The law enforcement agency shall then determine whether the situation is indeed an emergency situation as defined in subsection (a)(2) of this section. If the situation is determined to be an emergency, the law enforcement agency shall identify the scope of assistance being requested by consulting with the non-agent private prison or jail to determine:

- (i) Number and type of personnel needed;
- (ii) Number and type of vehicles needed;
- (iii) Amount and type of riot equipment needed;
- (iv) Number and type of weapons needed, including chemical agents;
- (v) Number of tracking pack or scent specific canines needed; and
- (vi) Number of horses needed.

(C) After a Texas Ranger, DPS sergeant or higher ranking officer, county sheriff, or municipal police chief reviews the information gathered in subsection (c)(1)(B) of this section and concurs with the scope of assistance required from the TDCJ, law enforcement agency staff may call the nearest TDCJ facility's warden or designee to request assistance. The law enforcement agency shall describe the assistance being requested and agree to have a representative available to take an active role at the site of the emergency situation when the TDCJ team arrives.

(2) Approval.

(A) The TDCJ warden or designee shall contact the appropriate Correctional Institutions Division (CID) regional director for approval to render assistance. The regional director may agree to provide assistance if the assistance shall not jeopardize the safety and security of the TDCJ and its personnel.

(B) Once the TDCJ's assistance is approved, the warden or designee shall, in conjunction with the CID regional director, determine what requested resources shall be sent, based on the assessment of the information received as well as concurrent TDCJ needs. The warden or designee shall designate the senior member of the TDCJ emergency assistance team.

(3) Emergency Assistance.

(A) The responding TDCJ facility shall report the request for assistance and the facility's response to the Emergency Action Center (EAC) in accordance with AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents." The warden or designee shall be responsible for all follow-up actions as required by the directive.

(B) Arrival at the Emergency Situation Site.

(i) Upon arrival at the scene of the emergency situation site, the senior member of the TDCJ team shall be briefed by the representative of the law enforcement agency, department, non-agent private prison or jail required by subsection (c)(1)(C) of this section.

(ii) The senior member of the TDCJ team shall have sole discretion as to which TDCJ resources shall be deployed.

(C) The senior member of the TDCJ team shall be in charge of the TDCJ resources, to include personnel, at all times.

(D) If the emergency situation requires the use of tracking pack or scent specific canines, the requirements of AD-03.26, "Use and Training of Tracking Pack and Scent Specific Canines," shall be followed.

(d) Reimbursement for Assistance. The non-agent private prison or jail shall reimburse the TDCJ for all assistance rendered, to include the cost of employees, equipment, and supplies, as well as a minimum of \$1,000 for administrative overhead expenses. The TDCJ executive director may waive this requirement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-9693



CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.33

The Texas Board of Criminal Justice adopts amendments to §163.33, concerning Community Supervision Officers, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9892).

The adopted amendments are necessary to update the requirements for and training of Community Supervision Officers.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §509.008 and §509.009.

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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37 TAC §163.35

The Texas Board of Criminal Justice adopts amendments to §163.35, concerning Supervision, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9894).

The adopted amendments are necessary to revise the intrastate transfer process and to provide a specific definition of absconder.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §509.003.

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003.

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37 TAC §163.38

The Texas Board of Criminal Justice adopts amendments to §163.38, concerning Sex Offender Supervision, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9896).

The adopted amendments are necessary to add clarity and to conform to state law.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §76.016 and §509.003 and Texas Code of Criminal Procedure, Article 42.12 and Chapter 62.

Cross Reference to Statutes: Texas Government Code §492.013.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the repeal of rules in the Texas Administrative Code, Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services (DHHS): Subchapter A, §§109.101, 109.103, 109.105, 109.107, and 109.109, concerning General Rules; Subchapter B, §§109.203, 109.205, 109.207, 109.221, 109.223, 109.225, 109.227 - 109.229, 109.231, 109.233, 109.235, and 109.237, concerning Board for Evaluation of Interpreters (BEI) General Certificate; Subchapter C, §§109.303, 109.305, 109.311, 109.323, 109.325, 109.337, 109.339, 109.361, 109.363, 109.365, 109.367, 109.371, and 109.373, concerning Certified Court Interpreters General Rules; Subchapter D, §§109.401, 109.403, 109.405, 109.407,

109.409, 109.411, 109.413, 109.415, and 109.417, concerning Specialized Telecommunications Assistance Program; Subchapter E, §109.501 and §109.503, concerning Certified Trilingual Interpreters; and Subchapter F, §§109.601, 109.603, 109.605, 109.607, 109.609, and 109.611, concerning Deaf and Hard of Hearing Driver Identification Program. DARS also adopts, as replacement of the repealed rules and/or the subject matter of the rules, new rules and divisions in Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter A, General Rules, §§109.101, 109.103, 109.105, 109.107, and 109.109; Subchapter B, Board for Evaluation of Interpreters, Division 1, BEI Interpreter Certification, §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.213, 109.215, 109.217, 109.219, 109.221, 109.223, 109.225, 109.227, and 109.229; Division 2, BEI Court Interpreter Certification, §§109.301, 109.303, 109.305, 109.307, 109.309, 109.311, 109.313, 109.315, 109.317, 109.319, 109.321, 109.323, 109.325, 109.327, 109.329, and 109.331; Division 3, BEI Trilingual Certification, §§109.401, 109.403, and 109.405; Subchapter C, Specialized Telecommunications Assistance Program, §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, and 109.519; Subchapter D, Deaf and Hard of Hearing Driver Identification Program, §§109.601, 109.603, 109.605, 109.607, and 109.609; and Subchapter E, Certificate of Deafness for Tuition Waiver Program, §§109.701, 109.703, 109.705, 109.707, and 109.709. The repeal of §§109.101, 109.103, 109.105, 109.107, 109.109, 109.203, 109.205, 109.207, 109.221, 109.223, 109.225, 109.227 - 109.229, 109.231, 109.233, 109.235, 109.237, 109.303, 109.305, 109.311, 109.323, 109.325, 109.337, 109.339, 109.361, 109.363, 109.365, 109.367, 109.371, 109.373, 109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415, 109.417, 109.501, 109.503, 109.601, 109.603, 109.605, 109.607, 109.609, and 109.611 are adopted without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10160) and will not be republished. New §§109.101, 109.103, 109.105, 109.107, 109.109, 109.201, 109.203, 109.207, 109.209, 109.211, 109.213, 109.215, 109.217, 109.219, 109.221, 109.223, 109.225, 109.227, 109.301, 109.303, 109.305, 109.307, 109.309, 109.311, 109.313, 109.315, 109.317, 109.319, 109.321, 109.323, 109.325, 109.327, 109.329, 109.331, 109.401, 109.403, 109.405, 109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.515, 109.517, 109.519, 109.601, 109.603, 109.605, 109.609, 109.701, 109.703, 109.705, 109.707, and 109.709 are adopted without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10160) and will not be republished. Sections 109.205, 109.229, 109.513, and 109.607 are adopted with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10160). The text of the rules will be republished.

The repeals and new rules are being adopted as the result of the four-year rule review that DARS conducted of the rules in Chapter 109, Office for Deaf and Hard of Hearing Services, in accordance with Texas Government Code §2001.039.

Elsewhere in this issue of the *Texas Register*, DARS contemporaneously adopts the rule review of Chapter 109. As a result of the review, DARS determined that the reasons for originally adopting the rules continue to exist. However, DARS determined that Chapter 109 needed language revisions and reorganization, including renumbering and revision to be consistent with DARS'

rules writing style, to align rules with statutes and current operations, and to delete rules that are no longer necessary.

SECTION-BY-SECTION SUMMARY

In Subchapter A, General Rules, DARS added legal authority and purpose sections to the definitional section in accordance with the structure and format of all DARS rules.

In Subchapter B, Board for Evaluation of Interpreters, DARS reorganized all Board for Evaluation of Interpreter (BEI)-related materials in Chapter 109, which required Subchapters C and E to be repealed and replaced with three new divisions. Subchapter B, Division 1, concerns BEI Interpreter Certification; Subchapter B, Division 2, concerns BEI Court Interpreter Certification; and Subchapter B, Division 3, concerns BEI Trilingual Certification.

The repeal and reorganization of these subchapters required DARS to repeal Subchapter D, Specialized Telecommunications Assistance Program, and adopt replacement Subchapter C, Specialized Telecommunications Assistance Program, with new rules. Adopted new Subchapter C contains new definitions, provides for the process of determining voucher category value and eligibility criteria for a voucher category; provides for preliminary and comprehensive assessment to determine eligibility criteria for a voucher; provides for the removal of certifying individuals based on violations related to the program; and provides that vouchers are financial assistance and may not cover the full price of a device.

The repeal and reorganization of these rules required DARS to repeal Subchapter F, Deaf and Hard of Hearing Driver Identification Program, and adopt replacement Subchapter D, Deaf and Hard of Hearing Driver Identification Program.

As a result of the four-year rule review, DARS added new Subchapter E to establish and provide for the Certificate of Deafness for Tuition Waiver Program.

DARS received three comments from the Coalition for Nurses in Advanced Practice. A summary of the comments and agency responses follow.

Comment: The coalition recommended adding Advanced Practice Registered Nurses (APRNs) to the list of licensed medical professionals in DHHS Board for Evaluation of Interpreters rules permitted to document a disability qualifying for examination accommodations. APRNs are educated to assess and treat patients with a mental or physical impairment that would qualify for accommodations under the Americans with Disabilities Act.

Response: DARS agrees with the commenter and recognizes that APRNs are educated to assess and treat consumers with a mental or physical impairment. Therefore, DARS has revised §109.229(c)(1) to allow APRNs to provide documentation regarding a diagnosed disability.

Comment: The coalition recommended adding APRNs to the list of persons under DHHS Specialized Telecommunications Assistance Program rules authorized to certify a disability that impairs a person's ability to access the telephone network.

Response: DARS agrees with the commenter and recognizes that APRNs are educated to assess and treat consumers with a mental or physical impairment. Therefore, DARS has revised §109.513(a)(4) to allow APRNs to be a person eligible to certify a Specialized Telecommunications Assistance Program application.

Comment: The coalition recommended adding APRNs to DHHS Driver Identification Program rules as being among the health care professionals authorized to certify a person has a hearing loss severe enough to impede communication during a traffic stop. The Board of Nursing licenses several types of APRNs qualified to be primary health care providers.

Response: DARS agrees with the commenter and recognizes that APRNs are educated to assess and treat consumers with a mental or physical impairment. Therefore, DARS has revised §109.607(b)(3) to allow APRNs to provide certification as proof that a consumer is deaf or hard of hearing.

SUBCHAPTER A. GENERAL RULES

40 TAC §§109.101, 109.103, 109.105, 109.107, 109.109

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS (BEI) GENERAL CERTIFICATE

40 TAC §§109.203, 109.205, 109.207, 109.221, 109.223, 109.225, 109.227 - 109.229, 109.231, 109.233, 109.235, 109.237

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER C. CERTIFIED COURT INTERPRETERS GENERAL RULES

**40 TAC §§109.303, 109.305, 109.311, 109.323, 109.325,
109.337, 109.339, 109.361, 109.363, 109.365, 109.367,
109.371, 109.373**

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER D. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

**40 TAC §§109.401, 109.403, 109.405, 109.407, 109.409,
109.411, 109.413, 109.415, 109.417**

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER E. CERTIFIED TRILINGUAL INTERPRETERS

40 TAC §109.501, §109.503

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER F. DEAF AND HARD OF HEARING DRIVER IDENTIFICATION PROGRAM

**40 TAC §§109.601, 109.603, 109.605, 109.607, 109.609,
109.611**

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER A. GENERAL RULES

40 TAC §§109.101, 109.103, 109.105, 109.107, 109.109

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

DIVISION 1. BEI INTERPRETER CERTIFICATION

40 TAC §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.213, 109.215, 109.217, 109.219, 109.221, 109.223, 109.225, 109.227, 109.229

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

§109.205. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) BEI Board--The seven-person advisory board appointed by the executive commissioner of HHSC, or his or her designee, to assist in administering the BEI.

(2) Certificates issued--

(A) Basic certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in routine educational and social service settings.

(B) Advanced certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in a variety of complex settings, such as routine medical, social service, K-12 and higher education, routine mental health, and routine quasi-legal.

(C) Master certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in a variety of highly complex settings, such as medical, mental health, quasi-legal, and educational settings.

(D) Court certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person is qualified to interpret all proceedings of Texas courts, including county, municipal, and justice courts.

(E) Intermediary--Level III certificate--A certificate issued by DARS to a person who is deaf or hard of hearing who has passed a skills evaluation certifying that the person possesses the ability to interpret for a wide range of communication styles, which may include but, not limited to non-standard signs/gestures, limited communication skills, characteristics of Deaf Culture that may not be familiar to hearing interpreters, deaf-blind, minimal language skills, and indigenous communication.

(F) Intermediary--Level V certificate--A certificate issued by DARS to a person who is deaf or hard of hearing who has passed a skills evaluation certifying that the person possesses the ability to interpret in a variety of settings and situations requiring extensive knowledge and training in specialized fields including, but not limited to mental health/psychiatric, medical/surgical, court/legal and matters involving juveniles, demonstrates near flawless skills in interpreting for a wide range of communication styles, which can include-but not limited to non-standard signs/gestures, limited communication skills, characteristics of Deaf Culture that may not be familiar to hearing interpreters, deaf-blind, minimal language skills, and indigenous communication.

(G) Oral Certificate: Basic (OC:B) certificate--A certificate issued by DARS to a person who has passed a skills evaluation in spoken-to-visible and visible-to-spoken communication, certifying that the person has basic proficiency in oral transliteration and speechreading.

(H) Oral Certificate: Comprehensive (OC:C) certificate--A certificate issued by DARS to a person who has passed a skills evaluation in spoken-to-visible and visible-to-spoken communication, certifying that the person has advanced proficiency in oral transliteration and speechreading.

(I) Oral Certificate: Visible (OC:V) certificate--A certificate issued by DARS to a person who is deaf or hard of hearing and who has passed a skills evaluation in visible-to-spoken communication, certifying that the person has advanced proficiency in oral transliteration and speechreading.

(J) Trilingual Advanced certificate--A certificate issued by DARS to a person who has passed a written test of Spanish proficiency and a skills evaluation certifying that the person has the ability to meaningfully and accurately understand, produce, and transform ASL to and from English and Spanish in a culturally appropriate manner, in more complex situations for routine educational and social service settings, such as K-12 educational and administrative interactions.

(K) Trilingual Master certificate--A certificate issued by DARS to a person who has passed a written test of Spanish proficiency and a skills evaluation certifying that the person has the ability to meaningfully and accurately understand, produce, and transform ASL to and from English and Spanish in a culturally appropriate manner, in the most complex situations including complex medical, complex mental health, quasi-legal, and educational settings.

(L) Morphemic Sign System (MSS) certificate--A certificate issued by DARS to a person who has passed a skills evaluation

certifying that the person can convey a message from verbal English into morphemic signs for English and from morphemic signs for English into verbal English.

(M) Signing Exact English (SEE) certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person can convey a message from verbal English into Signed Exact English and from Signed Exact English into verbal English.

(N) Level I certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some daily interpreting situations where expressive skills are usually stronger than receptive skills and sign vocabulary is limited.

(O) Level II certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some routine interpreting situations where the person exhibits good transliterating or interpreting skills, but not both.

(P) Level III certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey most routine interpreting situations where the person exhibits good expressive and receptive interpreting skills, displays a clear distinction between interpreting and transliterating and possess a sign vocabulary.

(Q) Level IV certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits strong expressive and receptive interpreting skills in settings such as medical, legal and psychiatric, demonstrates excellent use of ASL grammar and ASL features, transliterating skills are strong and processing is often at the textual level.

(R) Level V certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits very strong expressive and receptive interpreting skills in setting such as medical, legal and psychiatric, possess an extensive vocabulary, demonstrates sophisticated use of ASL grammar as well as ASL features and transliterates conceptually accurate with appropriate mouthing.

(3) Court proceeding--A proceeding that is under the jurisdiction of Texas courts for civil cases and criminal actions, including arraignments, hearings, examining trials, trials, depositions, mediations, court-ordered arbitrations, or other forms of alternative dispute resolution.

(4) Trilingual interpreter services--Interpreting services provided by an otherwise qualified interpreter who is proficient in Spanish, in addition to English and sign.

§109.229. *Examination Accommodations for Persons with Disabilities.*

(a) "Disability" has the meaning assigned by the ADA.

(b) Applicants who request a reasonable accommodation based on a claimed disability are provided with reasonable accommodations if they meet the eligibility criteria set forth in this subchapter.

(c) To be eligible for a reasonable accommodation based upon a diagnosed disability, a BEI applicant must make a written request and must:

(1) provide written documentation from a licensed medical professional (a physician, psychiatrist, advanced practice registered nurse, or psychologist) that:

(A) specifies the applicant's disability diagnosis or diagnoses;

(B) explains how the applicant's disability substantially limits his or her ability to take the test for which the applicant is applying under current testing procedures;

(C) provides guidance about recommended modifications that enable the applicant to test; and

(D) is dated less than two years from the date the application was received for the test for which the applicant is seeking an accommodation; and

(2) submit all documentation under cover of the certifying medical professional's letterhead and signature to DHHS.

(d) DHHS determines what reasonable accommodations an eligible BEI applicant receives, and the determination is final.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. BEI COURT INTERPRETER CERTIFICATION

40 TAC §§109.301, 109.303, 109.305, 109.307, 109.309, 109.311, 109.313, 109.315, 109.317, 109.319, 109.321, 109.323, 109.325, 109.327, 109.329, 109.331

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 3. BEI TRILINGUAL CERTIFICATION

40 TAC §§109.401, 109.403, 109.405

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER C. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

40 TAC §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, 109.519

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

§109.513. *Persons Authorized to Certify Disability.*

(a) An applicant must be certified as a person with a disability that impairs the person's ability to effectively access the telephone network. The following can serve as certifiers:

- (1) licensed hearing aid specialists;
- (2) licensed audiologists;
- (3) licensed physicians;
- (4) licensed advanced practice registered nurses;
- (5) DARS rehabilitation counselors;
- (6) state-certified teachers of persons who are deaf or hard of hearing;
- (7) licensed speech pathologists;
- (8) state-certified teachers of persons who are visually impaired;

(9) state-certified teachers of persons who are speech-impaired;

(10) state-certified special education teachers;

(11) STAP specialists as named in a DHHS STAP Outreach and Training contract;

(12) licensed social workers; or

(13) DHHS-approved specialists working in a disability-related field.

(b) By certifying an application, a certifier attests that he or she:

(1) is eligible to certify under the provisions of the program;

(2) has personally met with and assessed the applicant's disability to determine that he or she is eligible, in accordance with the program eligibility criteria;

(3) has reviewed the information on the application to ensure that the form is completed properly and that all requested information has been provided; and

(4) has determined that the applicant will be able to benefit from access to the telephone network system provided by the specialized telecommunications equipment or services requested on the application.

(c) An application must be properly certified before DHHS can process and approve the application and issue the voucher.

(d) Certifiers who have violated or who are suspected of violating any DARS, PUC, or other rules, policies, or laws relating to this program may no longer be authorized to certify applications. Persons committing or suspected of committing such violations may be referred to the PUC, to the certifier's licensing agency, or to both, as appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2013.

TRD-201301355

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: April 24, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 424-4050

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SUBCHAPTER D. DEAF AND HARD OF HEARING DRIVER IDENTIFICATION PROGRAM

40 TAC §§109.601, 109.603, 109.605, 109.607, 109.609

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

§109.607. Eligibility.

(a) To be eligible for a Visor Identification Card, an applicant must:

- (1) be a resident of Texas;
- (2) have a valid driver's license or permit issued by a state agency authorized to issue driver's licenses;
- (3) be a person with a disability that impairs the person's ability to hear; and
- (4) submit a completed application to DHHS, along with any requested documentation and any applicable fee.

(b) DHHS requires an applicant for a Visor Identification Card to provide acceptable proof that the applicant is deaf or hard of hearing. Acceptable proof may include the following:

- (1) medical proof as determined by DHHS that the applicant is deaf or hard of hearing;
- (2) a state-issued driver's license or permit which indicates that the applicant is deaf or hard of hearing; or
- (3) certification by a licensed physician, licensed advanced practice registered nurse, or licensed audiologist that the applicant has a hearing loss severe enough to possibly impede communication in some traffic stops.

(c) DHHS determines eligibility for a Visor Identification Card, and the determination is final.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2013.

TRD-201301356

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: April 24, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 424-4050



**SUBCHAPTER E. CERTIFICATE OF
DEAFNESS FOR TUITION WAIVER PROGRAM
40 TAC §§109.701, 109.703, 109.705, 109.707, 109.709**

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2013.

TRD-201301357
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: April 24, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 424-4050



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §159.1, concerning Substance Abuse Felony Punishment Facilities Eligibility Criteria. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §159.1.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201301412

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §151.8, concerning Advisory Committees, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9789).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §151.8.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201301413

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013

Adopted Rule Reviews

Department of Assistive and Rehabilitative Services

Title 40, Part 2

The Department of Assistive and Rehabilitative Services (DARS) adopts the review of 40 TAC Chapter 109, concerning Office for Deaf and Hard of Hearing Services, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10259).

Elsewhere in this issue of the *Texas Register*, DARS contemporaneously adopts the repeal and replacement of Chapter 109.

No comments were received regarding adoption of the rule review.

This concludes the review of 40 TAC Chapter 109, Office for Deaf and Hard of Hearing Services.

TRD-201301441

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: April 9, 2013

The Texas Board of Criminal Justice adopts the review of §152.51, concerning Authorized Witnesses to the Execution of an Offender Sentenced to Death, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9973).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §152.51.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201301414

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013

The Texas Board of Criminal Justice adopts the review of §152.61, concerning Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9973).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §152.61.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201301415

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013



The Texas Board of Criminal Justice adopts the review of §163.33, concerning Community Supervision Officers, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9973).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §163.33.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201301416

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013



The Texas Board of Criminal Justice adopts the review of §163.35, concerning Supervision, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9973).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §163.35.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201301417

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013



The Texas Board of Criminal Justice adopts the review of §163.38, concerning Sex Offender Supervision, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9973).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §163.38.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201301418

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: April 8, 2013



Texas Public Finance Authority

Title 34, Part 10

On April 4, 2013, the Texas Public Finance Authority (the Authority) completed its review of 34 TAC Chapters 221, 223, and 225, pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

The Authority received no comments with respect to these rules. However, the agency did adopt, by order published in this issue of the *Texas Register*, clarifying and conforming amendments to §§221.2 - 221.4. The Authority also adopted amendments to §§225.1, 225.3, and 225.7 as part of its rule review. The order for adoption of the amendments to §§225.1 and §225.3 is published in this issue and the order for adoption of the amendment to §225.7 was published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1219).

The Authority believes that the reasons for the rules in Chapter 221 continue to exist because the Authority is still charged with providing financing to certain agencies and institutions of higher education and these rules provide guidance to those entities in making requests for financing and utilizing bond proceeds. The Authority also believes that the reasons for the rules in Chapter 223 continue to exist because the Authority still has a program for the use of Historically Underutilized Businesses. Further, the Authority believes that the reasons for the adoption of the rules in Chapter 225 continue to exist because the Authority continues to administer the Master Lease Purchase Program and the rules guide client agencies in the use of that program.

Accordingly, the Authority re-adopts without changes Title 34, Part 10, §§221.1, 221.5, 221.6, 223.1, and 225.5, pursuant to §2001.039 of the Texas Government Code.

TRD-201301370

Susan Durso

General Counsel

Texas Public Finance Authority

Filed: April 5, 2013



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §34.1302(a)

Citation	Violation	Penalty
Insurance Code §6001.251(a)	No registration certificate	\$3,000
Insurance Code §6001.251(a)(3)	No license	\$3,000
Insurance Code §6001.252(a)(3)	Misrepresentation in connection with sale or services	\$1,000
28 TAC §34.510(f)	Registration information not displayed on vehicle(s)	\$250
28 TAC §34.511(f)(1)	Licensee not employed by registered firm	\$2,000
28 TAC §34.517	Failure to comply with adopted standards or manufacturer's instructions	\$500
28 TAC §34.517(a)(2)	Service tag not attached - portables	\$250
28 TAC §34.517(b)	Installation label not affixed to system upon completion	\$500
28 TAC §34.517(b)(4)	Service tag not attached - fixed system	\$500
28 TAC §34.517(h)	Fusible link manufacturer date not within 1 year	\$500
28 TAC §34.517(i)	Actuation cartridge not dated	\$500
28 TAC §34.517(j)	Seal or tamper indicator not dated	\$500
28 TAC §34.519(a)	Service tag not completed in detail	\$250
28 TAC §34.521(a)	Owner or AHJ not notified as required of unsafe or inoperable portable or fixed extinguisher	\$500
28 TAC §34.521(a)	Failed to attach red tag to impaired extinguisher	\$500
28 TAC §34.521(a)	Attached service tag to impaired extinguisher	\$1,000

28 TAC §34.514(a)(5)(B)		Lapse of Insurance				
Months	Penalty		+	Amount saved	=	Total
0 - 1	\$200		+	\$125	=	Warning Ltr
1 - 2	\$500		+	\$250	=	\$750
2 - 3	\$500		+	\$375	=	\$875
3 - 4	\$500		+	\$500	=	\$1,000
4 - 5	\$500		+	\$625	=	\$1,125
5 - 6	\$500		+	\$750	=	\$1,250
6 - 7	\$750		+	\$875	=	\$1,625
7 - 8	\$750		+	\$1,000	=	\$1,750
8 - 9	\$750		+	\$1,125	=	\$1,875
9 - 10	\$750		+	\$1,250	=	\$2,000
10 - 11	\$750		+	\$1,375	=	\$2,125
11 - 12	\$750		+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(b)

Citation	Violation	Penalty
Insurance Code §6002.301	Engage in business w/o license or registration certificate	\$3,000
Insurance Code §6002.302(a)(3)	Misrepresentation in connection with sale or services	\$1,000
28 TAC §34.610(c)	Registration information not displayed on vehicle	\$250
28 TAC §34.616(b)(1)	Installation not performed by or under direct on-site supervision of authorized licensee	\$2,000
28 TAC §34.616(b)(2)	Maintenance or service not performed by or under direct on-site supervision of authorized licensee	\$2,000
28 TAC §34.616(b)(4)	Failure to comply with adopted standards	\$500
28 TAC §34.616(c)(1)	Monitoring an alarm for an unregistered firm	\$3,000
28 TAC §34.616(c)(2)(A)	Connecting an alarm to an unregistered monitoring firm	\$3,000
28 TAC §34.619(a)	System or modification to existing system not planned by authorized person	\$3,000
28 TAC §34.620(a)	Installation label not affixed to inside of control panel cover	\$500
28 TAC §34.621(a)	Service label not affixed to control panel cover	\$500
28 TAC §34.622(a)	Inspection/test label not affixed to inside of control panel cover	\$500
28 TAC §34.623(a)	Completed yellow label not attached inside or outside of the control panel cover or, if the system has no panel, in a permanent location	\$500
28 TAC §34.624(a)	Completed red label not attached to outside of control panel of impaired system	\$1,000
28 TAC §34.623, §34.624	Owner or AHJ not notified within required time of yellow or red label conditions	\$500

28 TAC §34.613(a)(5)(B)	Lapse of Insurance				
Months	Penalty	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Ltr
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(c)

Citation	Violation	Penalty
Insurance Code §6003.151(a)	Engage in business w/o registration certificate	\$3,000
Insurance Code §6003.153(b)	Act as responsible managing employee (RME) w/o holding license	\$3,000
Insurance Code §6003.252(3)	Misrepresentation connected to sales or service	\$1,000
28 TAC §34.710(a)	Subcontracting to unregistered firm to perform work of fire protection sprinkler contractor	\$3,000
28 TAC §34.711(a)	Firm's RME not licensed or license expired	\$1,000
28 TAC §34.716(a)	System not installed under supervision of appropriately licensed individual	\$3,000
28 TAC §34.716(b)	Failed to affix material and test certificate on or near riser	\$500
28 TAC §34.716(c)	Service, maintenance, or testing not performed by appropriately licensed individual	\$3,000
28 TAC §34.716(d)	Records not available for examination	\$500
28 TAC §34.716(e)	Registration information not displayed on vehicle	\$250
28 TAC §34.716(h)	System planning not performed under direct supervision of appropriately licensed RME	\$3,000
28 TAC §34.716(i)	Failed to comply with adopted standards	\$500
28 TAC §34.717	Violations related to requirements of sprinkler system plans	\$500
28 TAC §34.718(a)	Installation tag not completed in detail/attached to riser	\$500
28 TAC §34.719(a)	Service tag not completed in detail/attached to riser	\$500
28 TAC §34.720(a)	ITM tag not completed in detail/attached to riser	\$500
28 TAC §34.721(a)	Yellow tag not completed/attached to noncompliant system	\$500
28 TAC §34.722(a)	Red tag not completed and attached to system with an emergency impairment	\$500
28 TAC §34.721, §34.722	Owner/AIJ not notified within required time of yellow or red tag conditions	\$500

28 TAC §34.713(a)(7)(B)		Lapse of Insurance			
Months	Penalty	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(d)

Code	Violation	Penalty
Occupations Code §2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	\$1,000
Occupations Code §2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	\$500
Occupations Code §2154.252(c)	Fireworks sold or offered to children under 16 or to an intoxicated or incompetent person	\$500
28 TAC §34.809(c)	No permit (stand closed until corrected)	\$500
28 TAC §34.809(c)	Original permit not posted	\$100
28 TAC §34.817(d)	No 2A Extinguisher per 2000 sqft and within 75 ft travel	\$500
28 TAC §34.817(e)	Exit pathway obstructed	\$250
28 TAC §34.817(g)	Smoking inside the retail site	\$500
28 TAC §34.817(g)	Smoking within 10 ft of retail site	\$250
28 TAC §34.817(g)	"NO SMOKING" signs not posted where required (4" letters)	\$100
28 TAC §34.817(h)	Site operator consuming or under influence of alcohol (closed until corrected)	\$500
28 TAC §34.817(i)	No off highway parking provided	\$100
28 TAC §34.817(k)	Selling fireworks from a single or multi-family residential structure	\$500
28 TAC §34.817(o)	Fireworks do not conform to USCPs LABELING	\$500
28 TAC §34.817(p)	Internal combustion engine operating inside retail site	\$500
28 TAC §34.832(1)	Mezzanine or 2nd story accessible to the public	\$250
28 TAC §34.832(1)	Selling from a tent, boat, mobile vehicle, multi-use, or multi-tenant building (site closed)	\$500
28 TAC §34.832(5), (6)	Inadequate prevention of customers handling fireworks	\$100
28 TAC §34.832(8)	Local FD or County FM not notified of location in writing	\$100
28 TAC §34.832(9)	Trash or excessive unused boxes in sales area	\$50
28 TAC §34.832(10)	Stored behind glass with impinging direct sunlight	\$50
28 TAC §34.832(11), (14)	Violations related to extension cords, power strips, outside master shutoff switch	\$100
28 TAC §34.832(12)	Retail site not supervised by 18 years of age or older, Sales personnel <16 years of age (closed until corrected)	\$500
28 TAC §34.832(13)	Violations related to trash containers type and location	\$50
28 TAC §34.832(15), (17)	Space heaters or cooking equipment in sales/storage areas	\$100
28 TAC §34.832(19)	Site or features not complying with mercantile occupancy requirements of NFPA 101, Life Safety Code	\$1,000

Figure: 28 TAC §34.1302(c)

Code	Violation	Penalty
Occupations Code §2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	\$1,000
Occupations Code §2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	\$500
Occupations Code §2154.252(c)	Fireworks sold or offered to children under 16 or to an intoxicated or incompetent person	\$500
Occupations Code §2154.254	Sales personnel <16 years of age	\$500
28 TAC §34.809(c)	No permit (stand closed until corrected)	\$500
28 TAC §34.809(c)	Original permit not posted	\$100
28 TAC §34.817(a)	Stand not supervised, 18 years of age or older (closed until corrected)	\$500
28 TAC §34.817(d)	No equipment to extinguish small exterior fires	\$50
28 TAC §34.817(e)	Exit pathway obstructed	\$50
28 TAC §34.817(g)	Smoking inside the stand	\$500
28 TAC §34.817(g)	Smoking within 10 ft of stand	\$250
28 TAC §34.817(g)	"NO SMOKING" signs not posted (4" letters)	\$50
28 TAC §34.817(h)	Stand operator consuming or under influence of alcohol (closed until corrected)	\$500
28 TAC §34.817(i)	No off highway parking provided	\$100
28 TAC §34.817(i), (k)	Selling fireworks from a single or multi-family residential structure, tent, or motor vehicle	\$500
28 TAC §34.817(j)	No permit for retail stand (1 for ea. non connected stand) (stand closed until corrected)	\$100
28 TAC §34.817(m)	Trash, empty cardboard boxes, or high grass within 10 ft of stand	\$50
28 TAC §34.817(o)	Fireworks do not conform to USCPS LABELING	\$500
28 TAC §34.818(2)	Violations related to exit doors and proper operation	\$100
28 TAC §34.818(5)-(8)	Violations related to electrical inside and outside stand	\$100
28 TAC §34.818(9)	Violations related to generator location/no portable extinguisher	\$100
28 TAC §34.818(10)	Electric heater does not have a tip over cutoff switch	\$50
28 TAC §34.818(10)	Heat or light source with open flames in stand	\$100

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. Arkema, Inc.*, CA No. 4:13-cv-00935; In the United States District Court for the Southern District of Texas, Houston Division.

Background: This case seeks recovery of damages for injury to natural resources and recovery of costs associated with the future monitoring and restoration under 42 U.S.C. §9607(a)(4)(C) (CERCLA) and Texas Water Code §26.261 et seq. at the Defendant's facility located in the vicinity of 201 Dodge Street, Bryan, Brazos County, Texas. The Defendant's operation at the Dodge Street Facility included the formulation and manufacture of various agricultural chemicals including herbicides, fungicides, and insecticides. Manufacturing operations ceased at the Dodge Street Facility in 1994. During operation, hazardous substances including arsenic were disposed of and released at the Dodge Street Facility. The substances were released to groundwater, sediment, and the surface waters of several bodies of water. Those releases injured habitats and organisms, including: groundwater, wading birds, waterfowl, turtles and amphibians, fish, crayfish, and macro-invertebrates.

Nature of the Settlement: The action by the State of Texas against Arkema, Inc., will be settled by a Consent Decree in the United States District Court for the Southern District of Texas, Houston Division.

Proposed Settlement: The proposed settlement orders Defendant to pay assessment costs incurred by the Plaintiffs. The proposed settlement also requires the Defendant to fund the restoration of natural resources damaged by the releases at and from the Dodge Street Facility.

For a complete description of the proposed settlement, the complete proposed Consent Decree Addressing Natural Resource Damages should be reviewed. Requests for copies of the proposed settlement, and written comments on the proposed settlement, should be directed to Mary E. Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201301344

Katherine Cary

General Counsel

Office of the Attorney General

Filed: April 3, 2013

Request for Applications for the Choose Life Grant Program

The Office of the Attorney General (OAG) is soliciting applications for projects that support the Choose Life Grant Program. The purpose of the OAG Choose Life Grant Program is to provide funds, using a competitive allocation method, as described in Chapter 402 of the Texas Government Code.

Applicable Funding Source for Choose Life Grant Program. The Choose Life Grant Program receives funding from a separate account in the general revenue fund that the OAG is authorized to administer to make grants to an eligible organization. The Choose Life account is authorized by §504.662 of the Texas Transportation Code, and §402.036 of the Texas Government Code, and is funded by fees collected for the purchase of a Choose Life License Plate, as well as gifts, grants, donations and legislative appropriations. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements.

Eligible Applicants. An Applicant Organization must be an eligible organization in this state to apply for the Choose Life Grant Program, meaning it must meet all of the following criteria:

An organization that provides services in this state and is exempt from federal income taxation under §501(a), Internal Revenue Code of 1986, by being listed as an exempt charitable organization under §501(c)(3) of that code;

Provides counseling and material assistance to pregnant women who are considering placing their children for adoption;

Does not charge for services provided;

Does not provide abortions or abortion-related services or make referrals to abortion providers;

Is not affiliated with an organization that provides abortions or abortion-related services or makes referrals to abortion providers; and

Does not contract with an organization that provides abortions or abortion-related services or makes referrals to abortion providers.

Eligibility. The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the Request for Applications (RFA) and the Application Kit.

How to Obtain Application Kit. The OAG will post the Application Kit on the OAG's website at www.texasattorneygeneral.gov/chooselife. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicant Organizations are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application.

Application Deadline. The Applicant Organization must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit to be considered timely filed.

Filing Instructions. Strict compliance with the filing instructions, as provided in the Application Kit, is required. The OAG will not consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available. Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum grant request the OAG will consider is \$1,000. As of the date this Application Kit is published, the amount available in the Choose Life account to award is approximately \$39,000. Applications requesting an amount below the minimum will not be considered.

Start Date and Length of Grant Contract Period. The term of this grant contract is one year from September 1, 2013, through August 31, 2014, with the ability for an extension of time, subject to and contingent on funding and approval by the OAG.

No Match or Volunteer Requirements. There are no match or volunteer requirements.

Award Criteria. The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring and review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will use a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area. All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Choose Life Grant Program Funds. OAG grant funds may not be used to support activities related to providing abortions or abortion-related services, or making referrals to abortion providers. OAG grant funds may not be used to support or pay the costs of equipment, overtime, out-of-state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person. If additional information is needed, contact Melissa Foley at Grants@texasattorneygeneral.gov or (512) 936-1278.

TRD-201301455

Katherine Cary
General Counsel

Office of the Attorney General
Filed: April 10, 2013

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/15/13 - 04/21/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/15/13 - 04/21/13 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-201301427

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 8, 2013



Request for Proposals to Perform Grant Program Management Services

The Office of Consumer Credit Commissioner (OCCC) seeks to obtain the services of a highly skilled and experienced (senior-level) grant program manager to provide comprehensive and professional services to assist the OCCC in fulfilling its duties and responsibilities under Texas Finance Code §393.628. The grant program manager will develop, implement, and enforce program activities in accordance with the state's Uniform Grant Management Standards (UGMS).

The grant program manager selected from this RFP will provide consultation, administrative oversight, and training as needed for the management and development of the Texas Financial Education Endowment Grant Program for a specified period of time as required by the OCCC, at its sole discretion.

Interested parties are requested to submit their proposals by 5:00 p.m., April 30, 2013, to the OCCC for evaluation.

For a copy of the full request for proposals, or if you have questions, please contact Dana Edgerton directly at (512) 936-7639 or dana.edgerton@occc.state.tx.us.

TRD-201301466

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 10, 2013



Texas Education Agency

Public Notice Announcing the Availability of Waiver Request to U.S. Department of Education under P.L. 107-110, Section 9401, to Reduce Duplication and Unnecessary Burden on the State Education Agency and Local Educational Agencies; Request for Related Public Comments

Purpose and Scope of the Waiver Request. The No Child Left Behind Act of 2001 (NCLB), Section 9401, allows the Secretary of Education at the U.S. Department of Education general authority to waive certain statutory and regulatory requirements for a State Education Agency (SEA) that makes a request. To further support the implementation of Texas' College and Career Readiness Standards, assessment and ac-

countability system, accountability intervention system, and teacher certification and principal accountability systems, and to avoid duplication and unnecessary burdens on the Texas Education Agency (TEA) and local educational agencies (LEAs), TEA is requesting a waiver of the following statutory provisions.

1. Title I School Improvement Funds at LEA Level: Section 1003(a) requiring TEA to reserve 4% of its Title I, Part A, allocation for school improvement activities and to distribute 95% to LEAs for use in Title I schools in improvement, corrective action, and restructuring.
2. Accountability System: Section 1111(b)(2)(C) and (E-H) defining the calculation of Adequate Yearly Progress (AYP), establishing of annual measurable objectives (performance targets) for AYP, 100% proficiency by the end of 2013-2014, and implementation of the respective requirements specified in Sections 1111 and 1116 and Section 1116(a)(1)(A-B) requiring the LEAs to make AYP determinations for schools.
3. Support and Intervention: Section 1116(b) requiring the LEA to identify schools for improvement, corrective action, and restructuring with corresponding requirements for implementation, including the availability of supplemental education services requirements.
4. Implementation of a Single Intervention System: Section 1116(b)(1)(E) and (e) and all corresponding provisions requiring the LEA to offer, in a federally prescriptive manner, school choice for schools for improvement, corrective action, and restructuring with corresponding requirements for implementation, and Section 1116(e) requiring the federally prescriptive implementation of supplemental educational services under Section 1116(b)(5, 7, and 8).
5. State Accountability System: Section 1116(c) requiring TEA to make determinations of AYP for LEAs and identify LEAs for improvement and corrective action with corresponding requirements for implementation.
6. Statewide System of Support: Section 1117 requiring TEA to establish a single statewide system of support.
7. Teacher Certification: Section 1119 requiring TEA and LEAs to determine highly qualified teacher determinations and reporting, and Section 2141(a, b, and c) requiring improvement planning and intervention requirements.
8. Small, Rural and Low-Income Schools: Sections 6213(b) and 6224(e) requiring TEA to limit participation in, and use of funds under the Small, Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA has made AYP and is complying with the requirements in the Elementary and Secondary Education Act (ESEA), Section 1116.
9. Intervention Regardless of Poverty Percentage: Section 1114(a)(1) requiring that a school have a poverty percentage of 40% or more in order to operate a schoolwide program.
10. Reward Schools: Section 1117(c)(2)(A) allowing TEA to reserve Title I, Part A, funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) has exceeded AYP for two or more consecutive years.
11. Funding Transferability: Section 6123 that limits the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs under the Funding Transferability provision.
12. School Improvement Grant: Section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the School Improvement Grant (SIG) final requirements.
13. 21st Century Community Learning Centers: Sections 4201(b)(1)(A) and 4204(b)(2)(A) that restrict the activities provided

by a community learning center under the 21st Century Community Learning Centers (21st CCLC) grant program to activities provided only during non-school hours or periods when school is not in session.

14. Rank Ordering of Priority Schools: Section 1113(a)(3-4) and (c)(1) requiring an LEA to serve eligible schools under Title I, Part A, in rank order of poverty and to allocate Title I, Part A, funds based on that rank ordering.

P.L. 107-110, Section 9401(3)(A)(i), requires the SEA to provide all interested LEAs in the state with notice and a reasonable opportunity to comment on the proposed waiver request. Public comments related to this proposed waiver request must be submitted to the TEA no later than May 1, 2013. Comments may be submitted to the Office of the Chief Deputy Commissioner by mail at 1701 North Congress Avenue, Austin, Texas 78701; by fax at (512) 463-5337; or by email at ChiefDeputyComm@tea.state.tx.us.

Further Information. For more information, contact the Office of the Chief Deputy Commissioner by mail at 1701 North Congress Avenue, Austin, Texas 78701; by fax at (512) 463-5337; or by email at ChiefDeputyComm@tea.state.tx.us.

TRD-201301463

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: April 10, 2013

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding City of Normangee, Docket No. 2011-0456-MWD-E on March 27, 2013 assessing \$46,826 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding West Houston Airport Corporation, Docket No. 2011-0667-MWD-E on March 27, 2013 assessing \$44,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Ali, Docket No. 2011-0748-PST-E on March 27, 2013 assessing \$4,025 in administrative penalties with \$4,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Spring, Docket No. 2011-1007-MLM-E on March 27, 2013 assessing \$13,015 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan Meza dba Odessa Truck Stop, Docket No. 2011-1129-PST-E on March 27, 2013 assessing \$28,234 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control & Improvement District No. 2, Docket No. 2011-1611-MWD-E on March 27, 2013 assessing \$210,365 in administrative penalties with \$210,365 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Texas Municipal Water District, Docket No. 2011-1738-MWD-E on March 27, 2013 assessing \$46,937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Asherton, Docket No. 2011-2329-MWD-E on March 27, 2013 assessing \$25,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Marazzi Tile, Inc., Docket No. 2012-0216-AIR-E on March 27, 2013 assessing \$136,010 in administrative penalties with \$27,202 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cumby, Docket No. 2012-0264-MWD-E on March 27, 2013 assessing \$14,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick County, Docket No. 2012-0285-PWS-E on March 27, 2013 assessing \$742 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASAD TRADING INC dba Mobberly Mart, Docket No. 2012-0369-PST-E on March 27, 2013 assessing \$7,518 in administrative penalties with \$1,503 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shiner, Docket No. 2012-0466-MWD-E on March 27, 2013 assessing \$8,950 in administrative penalties with \$1,790 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding SARDINIA INVESTMENT, INC. dba Bellfort Food Mart, Docket No. 2012-0503-PST-E on March 27, 2013 assessing \$9,679 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Lakewood Village, Docket No. 2012-0512-MWD-E on March 27, 2013 assessing \$8,082 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S S S ENTERPRISES, INC. dba On The Go Mart, Docket No. 2012-0572-PST-E on March 27, 2013 assessing \$8,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Luis Nieto dba Nieto's Drive Thru 6, Docket No. 2012-0585-PST-E on March 27, 2013 assessing \$2,634 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete, Docket No. 2012-0696-WQ-E on March 27, 2013 assessing \$20,462 in administrative penalties with \$4,092 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stamford, Docket No. 2012-0700-MWD-E on March 27, 2013 assessing \$17,655 in administrative penalties with \$3,531 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walter E. Nix, Jr. dba Centerline Water Supply Corporation, Docket No. 2012-0766-PWS-E on March 27, 2013 assessing \$3,798 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack A. Terhune dba Jack's Flying Service, Docket No. 2012-0853-PST-E on March 27, 2013 assessing \$10,327 in administrative penalties with \$2,065 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dolphin Petroleum, LP, Docket No. 2012-0894-AIR-E on March 27, 2013 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Chemical & Metallurgical Corporation, Docket No. 2012-0922-AIR-E on March 27, 2013 assessing \$28,362 in administrative penalties with \$5,672 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LISANTI REALTY CORPORATION dba Lisanti Food Service, Docket No. 2012-0950-PST-E on March 27, 2013 assessing \$8,491 in administrative penalties with \$1,698 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dripping Springs Apartments, L.P., Docket No. 2012-1020-MWD-E on March 27, 2013 assessing \$7,646 in administrative penalties with \$1,529 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of McGregor, Docket No. 2012-1036-MWD-E on March 27, 2013 assessing \$22,427 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port of Houston Authority, Docket No. 2012-1042-MWD-E on March 27, 2013 assessing \$8,250 in administrative penalties with \$1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENIGMA ENTERPRISES INC dba Star Food, Docket No. 2012-1054-PST-E on March 27, 2013 assessing \$9,048 in administrative penalties with \$1,809 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2012-1068-AIR-E on March 27, 2013 assessing \$45,303 in administrative penalties with \$9,060 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2012-1110-AIR-E on March 27, 2013 assessing \$15,350 in administrative penalties with \$3,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Somervell County, Docket No. 2012-1141-WR-E on March 27, 2013 assessing \$50,500 in administrative penalties with \$10,100 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Huntsville, Docket No. 2012-1172-MWD-E on March 27, 2013 assessing \$13,438 in administrative penalties with \$2,687 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOVERS LANE EUROPEAN AUTOMOTIVE LLC dba Snappee Auto Care & Lube, Docket No. 2012-1182-PST-E on March 27, 2013 assessing \$11,096 in administrative penalties with \$2,219 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. Du Pont de Nemours and Company, Docket No. 2012-1198-IWD-E on March 27, 2013 assessing \$107,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Real & Retail Unlimited Inc. dba Argyle Johnny Joes, Docket No. 2012-1205-PST-E on March 27, 2013 assessing \$10,806 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hari Enterprises, L.L.C. dba El Campo Truck Stop, Docket No. 2012-1209-PST-E on March 27, 2013 assessing \$9,525 in administrative penalties with \$1,905 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding LAKHANI INVESTMENTS, INC. dba Amigos Food Mart, Docket No. 2012-1239-PST-E on March 27, 2013 assessing \$8,876 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cullen McMorrow, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GEO SPECIALTY CHEMICALS, INC., Docket No. 2012-1268-IWD-E on March 27, 2013 assessing \$10,725 in administrative penalties with \$2,145 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lewisville, Docket No. 2012-1269-WQ-E on March 27, 2013 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Archer City, Docket No. 2012-1271-MWD-E on March 27, 2013 assessing \$8,280 in administrative penalties with \$1,656 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2012-1277-AIR-E on March 27, 2013 assessing \$12,850 in administrative penalties with \$2,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tank Works, Inc. dba Brazos Bend Home & Ranch, Docket No. 2012-1286-PWS-E on March 27, 2013 assessing \$1,127 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding USM Manufacturing L.L.C. dba Praters Foods, Docket No. 2012-1319-MLM-E on March 27, 2013 assessing \$24,673 in administrative penalties with \$4,934 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Yaser Belbisi dba Econo Lube N Tune and Brakes, and Mohamed Hafsi dba Econo Lube N Tune and Brakes, Docket No. 2012-1336-PST-E on March 27, 2013 assessing \$5,908 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SORAHIM INVESTMENT, INC. dba SHOP N GO, Docket No. 2012-1343-PST-E on March 27, 2013 assessing \$8,505 in administrative penalties with \$1,701 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Villa, Docket No. 2012-1352-PWS-E on March 27, 2013 assessing \$5,230 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2012-1362-AIR-E on March 27, 2013 assessing \$67,125 in administrative penalties with \$13,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NSBK Services, Inc. dba BK Mart, Docket No. 2012-1378-PST-E on March 27, 2013 assessing \$10,282 in administrative penalties with \$2,056 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westlake Longview Corporation, Docket No. 2012-1404-AIR-E on March 27, 2013 assessing \$28,923 in administrative penalties with \$5,784 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Knife River Corporation - South, Docket No. 2012-1405-AIR-E on March 27, 2013 assessing \$2,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIRAJ TRADERS USA, INC. dba Shop N Go 3, Docket No. 2012-1422-PST-E on March 27, 2013 assessing \$7,650 in administrative penalties with \$1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon, Docket No. 2012-1429-PST-E on March 27, 2013 assessing \$6,780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Terry, Staff Attorney at (512) 239-3400, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & M Interests, Inc. dba North Side Texaco, Docket No. 2012-1446-PST-E on March 27, 2013 assessing \$10,132 in administrative penalties with \$2,026 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Rock Field Services, L.P., Docket No. 2012-1447-AIR-E on March 27, 2013 assessing \$27,157 in administrative penalties with \$5,431 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mondial, Inc. dba Hemstead Truck Stop, Docket No. 2012-1474-PST-E on March 27, 2013 assessing \$7,629 in administrative penalties with \$1,525 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Avalon Investments, LLC dba Bunnys, Docket No. 2012-1479-PST-E on March 27, 2013 assessing \$33,850 in administrative penalties with \$6,770 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shepherd, Docket No. 2012-1511-MWD-E on March 27, 2013 assessing \$6,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chil L. Baldrige dba YCS Market, Docket No. 2012-1517-PST-E on March 27, 2013 assessing \$10,275 in administrative penalties with \$2,054 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Antonio Water System, Docket No. 2012-1550-MWD-E on March 27, 2013 assessing \$39,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alloy Polymers Texas, LP, Docket No. 2012-1584-PWS-E on March 27, 2013 assessing \$8,477 in administrative penalties with \$1,695 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-

3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McDonald's Corporation, Docket No. 2012-1598-MWD-E on March 27, 2013 assessing \$9,450 in administrative penalties with \$1,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRUSKI SERVICE CENTER, INC. dba Pruskis, Docket No. 2012-1621-PST-E on March 27, 2013 assessing \$12,850 in administrative penalties with \$2,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Borger, Docket No. 2012-1633-MWD-E on March 27, 2013 assessing \$16,600 in administrative penalties with \$3,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Forged Products, Inc., Docket No. 2012-1670-AIR-E on March 27, 2013 assessing \$9,757 in administrative penalties with \$1,951 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUNTER ROAD INVESTMENTS LLC dba Blue Agave Mobile Home Park, Docket No. 2012-1675-PWS-E on March 27, 2013 assessing \$405 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Navroz Lalani dba Topps Exxon Junction, Docket No. 2012-1718-PST-E on March 27, 2013 assessing \$7,942 in administrative penalties with \$1,588 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Zavalla, Docket No. 2012-1752-PWS-E on March 27, 2013 assessing \$178 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUDSON WATER SUPPLY CORPORATION, Docket No. 2012-1763-PWS-E on March 27, 2013 assessing \$1,216 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2012-1791-MWD-E on March 27, 2013 assessing \$10,001 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding P. M. Petroleum Inc dba Hamilton Market, Docket No. 2012-1812-PWS-E on March 27, 2013 assessing \$3,022 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caterpillar Inc., Docket No. 2012-1825-AIR-E on March 27, 2013 assessing \$7,701 in administrative penalties with \$1,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fritz Industries, Inc., Docket No. 2012-1845-AIR-E on March 27, 2013 assessing \$26,755 in administrative penalties with \$5,355 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearland, Docket No. 2012-1877-MWD-E on March 27, 2013 assessing \$24,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tenaha, Docket No. 2012-1893-PWS-E on March 27, 2013 assessing \$172 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Brine Company, L.L.C., Docket No. 2012-1926-WQ-E on March 27, 2013 assessing \$9,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kuick Way Enterprises Inc dba Wag A Bag 3, Docket No. 2012-1939-PST-E on March 27, 2013 assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brownsboro, Docket No. 2012-1945-PWS-E on March 27, 2013 assessing \$52 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EDDY PACKING CO., INC., Docket No. 2012-2018-WQ-E on March 27, 2013 assessing \$17,387 in administrative penalties with \$3,477 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FATIMA FAMILY VILLAGE, INC., Docket No. 2012-2122-PWS-E on March 27, 2013 assessing \$957 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301460
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 10, 2013



Notice of Minor Amendment Radioactive Material License R04100

APPLICATION. Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for amendment to Radioactive Material License R04100 on November 7, 2012 with supplemental procedures submitted on January 29 and 31, 2013; November 12, 2012 with replacement data submitted on February 8, 2012; February 4, 2013; March 1, 2013; March 6, 2013; and March 14, 2013. Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Disposal Facility (CWF) and Federal Facility Waste Disposal Facility (FWF) for commercial and federal low-level radioactive waste disposal. After further review, the Executive Director has determined that this request is a minor amendment. The amendment to the license is as follows. License conditions 1 and 12.A were modified to change the RSO from Scott Kirk, CHP to Jay Cartwright. License condition 11 was modified to: 1) revise the definition of "bulk waste" to include material that is soil or soil-like, debris, rubble, or a single uniform piece that is qualified for disposal under the license, 2) include the definition of "In-Cell Non-Containerized Disposal Unit" (IC NCDU), 3) include the definition of "Monolith", and 4) add the definition of "in transport". License condition 52 was modified to add air emissions studies for bulk waste disposal in the Compact Waste Disposal Facility and Federal Facility Waste Disposal Facility. License condition 74 was modified to allow radioactive waste to be placed into disposal units with standing water as long as the standing water is not in or

around the immediate vicinity of waste placement activities. License condition 86 was modified to require modifications or alterations of site characteristics or natural drainage conditions to be submitted and approved by the executive director. License condition 98 was modified to restrict the areas the Licensee engages in staging or managing waste intended for disposal to those areas specifically authorized under Radioactive Material License R04100. License condition 103 was modified to authorize the acceptance of soil and soil-like bulk low-level radioactive waste for disposal at the Federal Facility Waste Disposal Facility IC NCDU and Compact Waste Disposal Facility IC NCDU. License condition 104 was modified to authorize the acceptance of rubble and debris bulk low-level radioactive waste for disposal at the Federal Facility Waste Disposal Facility IC NCDU and Compact Waste Disposal Facility IC NCDU that meets certain criteria. License condition 105 was modified to include placement and compaction requirements for soil and soil-like bulk waste in the IC NCDU. License condition 106 was modified to include placement and grouting requirements for debris and rubble bulk waste in the IC NCDU. License condition 107 was modified to include more descriptive language; "ambient air temperature"; "in-place density and water content"; and "soil-and soil-like waste". License condition 108 was modified to update bulk soil and soil-like waste compaction requirements; to add debris and rubble waste grouting requirements; and to add a field quality control requirement for grout strength. License condition 119 was modified to change "the Restricted Area" to "any designated area within the Restricted Area" concerning requirements for the internal monitoring program. License condition 119.F was modified to say "in-vivo and/or in-vitro" to be consistent with License condition 119.A. License condition 124 was modified to provide clarification that employees must be monitored for potential intakes of airborne radioactivity in accordance with the internal monitoring program described in license condition 120 and to include the use of engineering controls where appropriate. License condition 127 was modified so that the designation of an airborne radioactivity area is consistent with the definition in 30 TAC §336.2. License condition 128 was modified to change the frequency of required surveys and to correct some errors. License condition 129 was modified to change the requirement from placing step-off pads outside the restricted area to placing the pads outside posted contamination areas and/or high contamination areas and to add the requirement that the results be documented in the post job survey. The radiation survey requirement in license condition 130 was moved to license condition 128. License condition 142 was modified to confirm that unstable soil or soil-like Class A low-level radioactive waste may be disposed of within concrete canisters. License condition 148 was modified to confirm that the Licensee may accept compact Class A bulk waste for disposal in the Compact Waste Disposal Facility IC NCDU. License condition 149 was modified to confirm that the Licensee may accept federal facility Class A bulk waste for disposal in the Federal Facility Waste Disposal Facility IC NCDU. License condition 156.B was removed. License conditions 156.B-J were added to ensure certain bulk waste placement procedures and specifications are met. License condition 186 was modified to add the amendment applications to this condition. Attachment C, Section 3.0 was modified to provide that all waste must be received of and disposed of in 7 days. Attachment C, Section 3.4.2 was modified to add that the Licensee does not possess waste for purposes of determining compliance with the SNM mass limits if the waste is in transport, that written notification shall be provided to the Executive Director within 24 hours if any waste shipments exceeds the time limits for having waste in transport, and that waste shipments that are in transport shall be placed in secured storage. Attachment C was modified in Section 9.2 to allow the Licensee to modify the size of the modular concrete canisters (MCCs) on a case-by-case basis provided that the proposed MCCs are equivalent to currently approved MCCs.

The land disposal facility for low-level radioactive waste disposal is located at 9998 State Highway 176 West in Andrews County, Texas. The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type=>. For an exact location, refer to the application. The TCEQ Executive Director has completed the technical review of the amendment application and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility must operate with regard to existing authorized receipt of wastes and does not change the concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment application with supporting documents, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews Public Library in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

EXECUTIVE DIRECTOR ACTION. The application is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license or permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register*; whichever is later.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Further information may also be obtained from WCS at the address stated above or by calling Mr. Scott Kirk at (432) 525-8500.

TRD-201301459

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 10, 2013

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**Notice of Receipt of Application and Intent to Obtain
Municipal Solid Waste Limited Scope Major Permit
Amendment Permit No. 2027**

APPLICATION. Golden Triangle Landfill TX, LP, 5757A Oates Road, Houston, Harris, County, Texas 77078, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Limited Scope Permit Major Amendment to obtain authorization to accept Class I nonhazardous industrial solid waste. The amendment also requests (1) to revise the final contour and excavation plans for the facility to incorporate the acceptance of Class I waste AND (2) to add a liquid waste bulking facility to accept Class I and non-Class I waste for solidification. The facility is located at 6433 Labelle Road, Beaumont, Jefferson County, Texas 77705. The TCEQ received the application on February 8, 2013. The permit application is available for viewing and copying at the Theodore R. Johns Sr. Library, 4255 Fannett Road, Beaumont, Jefferson County, Texas 77705 and may be viewed online at www.ftwweaverboos.com. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.993333&lng=-94.169166&zoom=13&type=r>. For exact location, refer to application. The TCEQ Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number;

the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Golden Triangle Landfill TX, LP at the address stated above or by calling Mr. Oliver Ford, Environmental Manager, Golden Triangle Landfill TX, LP at (337) 527-6857.

TRD-201301458
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 10, 2013

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Notice of Water Quality Applications

The following notices were issued on March 29, 2013 through April 5, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

VAITHI DEVELOPMENT INC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012527001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 14718 Kuykendahl Road between Farm-to-Market Road 1960 and Interstate 45 in Harris County, Texas 77090.

MARMAC LLC which operates McDonough Marine Service-Channelview Fleet, has applied for a major amendment to TPDES Permit No. WQ0004633000 to authorize less stringent effluent limitations for total suspended solids. The current permit authorizes the discharge of void and ballast water on an intermittent and flow variable basis via Outfall 001. The facility is located at 17500 Market Street, approximately 400 feet south of the Monmouth Drive Interchange Exit 786 on Interstate 10 in the City of Houston, Harris County, Texas.

APEX BETHEL ENERGY CENTER LLC which proposes to operate Bethel Energy Center, a compressed air energy storage (CAES) facility, has applied for new permit TPDES Permit No. WQ0005002000 to authorize the discharge of non-contact cooling tower blowdown at a daily average flow not to exceed 223,000 gallons per day via Outfall 001. The facility will be located approximately 2 miles south of the intersection of Farm-to-Market Road 2706 and United States Highway 287 South, at the southeast corner of the intersection of Farm-to-Market Road 2706 and County Road 2504, approximately 5 miles northwest of Tennessee Colony, Anderson County, Texas 75861.

J AND S WATER COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0011720001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located south of Woodland Lane, approximately 1,000 feet west of Farm-to-Market Road 1409 and approximately 500 feet north of Old River Road in Chambers County, Texas 77580.

WESTFIELD MOBILE HOME COMMUNITY LTD has applied for a renewal of TPDES Permit No. WQ0012555001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 520 Gulf Bank Road approximately 1,300 feet east of Airline Drive in Harris County, Texas.

BEACON ESTATES WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014963001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 800 feet east of Farm-to-Market Road 359; approximately three miles north of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 1458 in Waller County, Texas 77423.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301457

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 10, 2013



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 8, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. League City Paving Company, Inc.; SOAH Docket No. 582-12-5907; TCEQ Docket No. 2011-1756-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against League City Paving Company, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201301461

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 10, 2013



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 8, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Custom Water Co., L.L.C.; SOAH Docket No. 582-12-7028; TCEQ Docket No. 2012-0160-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Custom Water Co., L.L.C. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201301462

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 10, 2013



Texas Ethics Commission

List of Late Filers

Listed below is the name of a filer from the Texas Ethics Commission who failed to pay a penalty fine for a late report in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due July 16, 2012 for Candidates and Officeholders

Omar S. Rivero, 400 Mann Street, Suite 709, Corpus Christi, Texas 78401

TRD-201301449

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Texas Facilities Commission

Request for Proposal #303-4-20378

The Texas Facilities Commission (TFC), on behalf of the Department of State Health Services (DSHS), announces the issuance of Request for Proposals (RFP) #303-4-20378. TFC seeks a five (5) or ten (10) year lease of approximately 26,908 square feet of office, storage and secured vehicle compound space in Tyler, Smith County, Texas.

The deadline for questions is April 30, 2013, and the deadline for proposals is May 7, 2013, at 3:00 p.m. The award date is June 18, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=105277.

TRD-201301468

Kay Molina

General Counsel

Texas Facilities Commission

Filed: April 10, 2013

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 23 through February 28, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on April 10, 2013. The public comment period for this project will close at 5:00 p.m. on May 10, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Texas City Terminal Railway Company; Location: The project site is located in the Texas City Industrial Canal, Texas City Turning Basin, and Texas City Channel within the boundaries of the Port of Texas City, near the City of Texas city, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas City and Virginia Point, Texas. Latitude: 29.366764 North; Longitude -94.887904 West. Project Description: The appli-

cant proposes to hydraulically and/or mechanically dredge all docks (see attached plans for entire listing) located within the Port of Texas City boundaries to previously authorized depths and to perform maintenance dredging to previously authorized depths for a period of 10 years. The applicant proposes to perform silt blade/water injection intermittent maintenance dredging for a period of 10 years to previously authorized depths (Department of the Army Permit SWG-2001-01855) at Docks 11, 12, 15, 16, 18, 19, 20, 22N, 22S, 40, 41, 45, 50, 51, 52, 54A, 54E, 56, 57, 58, 59. Most of these docks will contour the volume of material evenly over the bottom depth of the dock unless a created sediment basin is needed. All maintenance dredged material will be placed within Placement Areas 5, 6, and Shoal Point Dredged Material Placement Area (DMPA), formerly known as Snake Island DMPA. The exception to placement of material only applies to those docks authorized for intermittent silt blade/water injection maintenance dredging when this method is employed. CMP Project No.: 13-1082-F1 Type of Application: U.S.A.C.E. permit application #SWG-2013-00042 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA)

Applicant: Doug Norrell; Location: The project site is located in Little Bay, at 1201 Broadway Street, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Latitude: 28.04760 North; Longitude 97.03307 West. Project Description: The applicant is requesting after-the-fact authorization for the placement of riprap and earthen fill along the water's edge for the purpose of shoreline stabilization, the dredging and placement of fill associated with the construction of a new boat ramp, and the construction of new docks. Approximately 3,161 square feet (approximately 163 cubic yards) of riprap and approximately 3,626 square feet of earthen fill were placed below the Annual High Tide Line (AHTL) along 460 linear feet of shoreline. The applicant also dredged and filled approximately 657 square feet (approximately 17 cubic yards of dredging and 12 cubic yards of fill) below the AHTL for the construction of a boat ramp and constructed additional bulkheads to protect the boat ramp (approximately 215 square feet and 10 cubic yards fill below the AHTL). Lastly, the applicant also constructed 484 square feet of floating dock perpendicular to the existing shoreline in addition to approximately 3,947 square feet of fixed dock and pier structures constructed mostly parallel to the existing shoreline. CMP Project No.: 13-1092-F1 Type of Application: U.S.A.C.E. permit application #SWG-2013-00042 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA)

Applicant: Celanese, Ltd.; Location: The project site is located in wetlands adjacent to Big Island Slough, at 9502 Bayport Boulevard, Pasadena, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Latitude: 29.622 North; Longitude -95.068 West. Project Description: The applicant proposes to discharge fill material into 6.13 acres of adjacent wetlands located within the project boundaries to expand its current facility. The expansion of the facility includes constructing one methanol unit, a new power interrupter building, a new methanol rundown storage tank, one storm water retention pond with connecting pipe, connection to a newly constructed 10-inch-diameter oxygen pipeline, and the construction of a pipeline corridor that will contain 23 existing utilities and supplies transported via pipelines. CMP Project No.: 13-1096-F1 Type of Application: U.S.A.C.E. permit application #SWG-2013-00042 is being evaluated under §404 of the Clean Water Act (CWA)

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and

policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address.

TRD-201301469

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: April 10, 2013



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate for Physician-Administered Drug - Xolair

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on the proposed Medicaid payment rate for physician-administered drug - Xolair.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rate for physician-administered drug - Xolair is proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

§355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

The reimbursement rate proposed reflects applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC,

Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301428

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rate for Preadmission Screening and Resident Review Level II Evaluation

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on the proposed Medicaid payment rate for Preadmission Screening and Resident Review (PASRR) Level II Evaluation.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rate for Preadmission Screening and Resident Review (PASRR) Level II Evaluation is proposed to be effective May 24, 2013.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC:

§355.748, which addresses reimbursement methodology for Preadmission Screening and Resident Review (PASRR) Level II Evaluation.

The reimbursement rate proposed reflects applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may

be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301435

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Certified Respiratory Care Practitioners Through the Comprehensive Care Program

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Certified Respiratory Care Practitioners through the Comprehensive Care Program (CCP).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for certified respiratory care practitioners - CCP are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners;

§355.8089, which addresses payments for in-home respiratory therapy services for ventilator-dependent persons; and

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate

Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301429

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Diabetic Equipment and Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Diabetic Equipment and Supplies.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for diabetic equipment and supplies are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics and supplies; and

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate

Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301432

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Early Periodic Screening, Diagnosis and Treatment - Dental Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Early Periodic Screening, Diagnosis and Treatment (EPSDT) - Dental Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for EPSDT Dental Services are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics

of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas, 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301434

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Hearing Aids

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for hearing aids.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for hearing aids are proposed to be effective June 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8141, which addresses the reimbursement methodology for hearing aids and hearing aid services.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate

Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301439

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Incontinence Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for incontinence supplies.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for incontinence supplies are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics and supplies; and

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate

Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301440

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Medicaid Biennial Calendar Fee Review are proposed to be effective July 1, 2013, for the following services:

- (1) Allergy Testing Services;
- (2) Auditory System Surgery;
- (3) "C Codes" (intraocular lens, neurostimulator lead, unclassified drugs or biological);
- (4) Cardiography and Echocardiography;
- (5) Cardiovascular Services;
- (6) Dialysis Services;
- (7) Gastroenterology;
- (8) Genetics;
- (9) Intravenous Treatments including Chemotherapy;
- (10) "M Codes" (Prescription Monitoring);
- (11) Male Genital System Surgery;
- (12) Medicine (Other);
- (a) Anesthesia and Sedation;

- (b) Cognitive Capability Examinations;
- (c) Chiropractic and Osteopathic Manipulation;
- (d) Electrode Insertion;
- (e) Glucose Monitoring;
- (f) Hyperbaric Oxygen Therapy;
- (g) Laser Treatment;
- (h) Nerve and Neurological Evaluations and Procedures;
- (i) Phlebotomy Procedures;
- (j) Photodynamic Therapy;
- (k) Specialized Child Examinations;
- (l) Supplemental Services (specimen handling, physician education, and services provided outside an office);
- (13) Noninvasive Vascular Diagnostic Studies;
- (14) Ophthalmological Services;
- (15) Psychiatric Services;
- (16) Pulmonary Services; and
- (17) Substance Use Disorder Services.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8001, which addresses the reimbursement methodology for vision care services;

1 TAC §355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners;

1 TAC §355.8241, which addresses the reimbursement methodology for chemical dependency treatment facilities; and

1 TAC §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, House Bill 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhp.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301430

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Mobility Aids

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Mobility Aids.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for mobility aids are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics and supplies; and

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhp.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301431

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for New Orthoses Benefits

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for new orthoses benefits.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for new orthoses benefits are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies; and

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301433

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Some Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Added as Medicaid Benefits During the 2013 Annual Healthcare Common Procedure Coding System Update

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Some Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) added as Medicaid benefits during the 2013 Annual Healthcare Common Procedure Coding System (HCPCS) Update.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The revised payment rates for DMEPOS - HCPCS are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics and supplies; and

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a

copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301436

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for the 2013 Healthcare Common Procedure Coding System Quarterly Update for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies - Type of Service 9-J-L

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for 2013 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Type of Service (TOS) 9 (Supplies)-J (Purchase)-L (Rental).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates included in the 2013 HCPCS quarterly update for TOS 9-J-L are proposed to be effective July 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics and supplies; and

1 TAC §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate

Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301438

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2013



Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Youth Empowerment Services (YES) waiver, under the authority of §1915(c) of the Social Security Act. The Youth Empowerment Services waiver was renewed effective April 1, 2013 for a five-year period. The proposed effective date for the amendment is July 1, 2012.

The waiver is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. At any given time, the waiver program can serve up to 400 youth who are at least age 3 but under age 19 and who are predicted to remain in the waiver for 12 months. The waiver is limited to individuals residing in Bexar, Tarrant, and Travis Counties.

The purpose of this amendment is to remove the current restriction that prohibits Youth Empowerment Services waiver participants from receiving State Plan Services through the Texas Healthcare Transformation Quality Improvement Program 1115 waiver, which include the STAR and STAR+PLUS programs. Although the Texas Healthcare Transformation Quality Improvement Program 1115 waiver already allows YES participants to participate in STAR and STAR+PLUS, the YES waiver itself precludes it. By removing the restriction in the Youth Empowerment Services waiver, YES waiver participants will be able to receive Medicaid State Plan services through STAR and STAR+PLUS.

The Health and Human Services Commission is requesting that the waiver amendment be approved for the period that began on July 1, 2012, and that ended March 31, 2013. This amendment maintains cost neutrality for waiver years 2012 through 2013.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1315, fax (512) 491-1957, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201301426
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 8, 2013



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan by modifying fees for existing services. As required by Title 1 of the Texas Administrative Code §355.8141(b)(3), Reimbursement for Hearing Aid Services, the Health and Human Services Commission has reviewed the maximum allowable fee schedule and has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Hearing Aids and Audiometric Evaluations.

The proposed amendment is estimated to result in an additional annual savings of \$1,614,010 for federal fiscal year (FFY) 2013, consisting of

\$957,108 in federal funds and \$656,902 in state general revenue. For FFY 2014, the estimated annual savings is \$5,086,030 consisting of \$2,984,991 in federal funds and \$2,101,039 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal also will be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201301467
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 10, 2013



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Jonathan I. Sheinberg, M.D., P.L.L.C. dba Cardiovascular Associates	L06540	Austin	00	03/20/13
Throughout TX	Century Asphalt, Ltd.	L06539	Houston	00	03/15/13
Throughout TX	Chief Inspection Service, Inc.	L06541	Longview	00	03/25/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	USMD Hospital at Arlington	L05727	Arlington	15	03/25/13
Austin	Austin Heart, P.L.L.C. dba Austin Heart	L04623	Austin	74	03/22/13
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	10	03/25/13
Bay City	Matagorda County Hospital District dba Matagorda Regional Medical Center	L02701	Bay City	17	03/27/13
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	97	03/14/13
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	08	03/19/13
Denton	Columbia Medical Center of Denton Subsidiary, L.P. dba Denton Regional Medical Center	L02764	Denton	70	03/14/13
El Paso	Edward R. Assi, D.O., P.A.	L05695	El Paso	10	03/22/13
Fort Worth	Fort Worth Surgicare Partners, Ltd. dba Baylor Surgical Hospital at Fort Worth	L05668	Fort Worth	10	03/18/13
Granbury	Granbury Hospital Corporation dba Lake Granbury Medical	L02903	Granbury	35	03/22/13
Greenville	Hunt Memorial Hospital District dba Hunt Regional Medical Center	L01695	Greenville	47	03/21/13
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	181	03/27/13
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	98	03/19/13
Houston	SJ Medical Center, L.L.C. dba St. Joseph's Medical Center	L02279	Houston	79	03/18/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	88	03/19/13
Houston	Cardinal Health	L05536	Houston	38	03/18/13
Houston	Houston Cyclotron Partners, L.P. dba Cyclotope	L05585	Houston	20	03/22/13
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	86	03/20/13
Houston	Radiomedix, Inc. dba Radiomedix	L06044	Houston	08	03/22/13
Houston	CHCA West Houston, L.P. dba West Houston Medical Center	L06055	Houston	17	03/18/13
Houston	The University of Texas M.D. Anderson Cancer Center	L06366	Houston	03	03/14/13
Irving	Las Colinas Oncology MSO, L.P. dba Las Colinas Cancer Center	L06078	Irving	09	03/21/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Lewisville	Cardiovascular Specialists, P.A.	L05507	Lewisville	23	03/27/13
Lubbock	M. Fawwaz Shoukfeh, M.D., P.A. dba Texas Cardiac Center	L05276	Lubbock	16	03/26/13
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	51	03/25/13
Pampa	Hunting Titan, Ltd.	L04920	Pampa	24	03/22/13
Paris	Essent PRMC, L.P. dba Paris Regional Medical Center	L03199	Paris	54	03/14/13
Round Rock	Texas Oncology, P.A.	L06240	Round Rock	03	03/19/13
San Angelo	Shannon Clinic	L04216	San Angelo	51	03/14/13
San Antonio	Medi-Physics, Inc. dba GE Healthcare	L04764	San Antonio	43	03/25/13
San Antonio	Alamo Feline Health Center, P.C.	L05752	San Antonio	07	03/19/13
Sweetwater	Ludlum Measurements Inc.	L01963	Sweetwater	97	03/22/13
Taylor	Scott & White Hospital - Taylor	L03657	Taylor	33	03/25/13
Throughout TX	Varco, L.P.	L00287	Houston	134	03/26/13
Throughout TX	Halliburton Energy Services, Inc.	L03284	Houston	39	03/22/13
Throughout TX	Warrior Energy Services Corporation	L06342	Odessa	06	03/19/13
Tomball	RCOA Imaging Services, Inc.	L06091	Tomball	07	03/27/13
Tyler	Carter Bloodcare	L04826	Tyler	17	03/18/13
Vernon	Wilbarger General Hospital	L03047	Vernon	21	03/25/13
Webster	CHCA Clear Lake, L.P. dba Clear Lake Regional Medical Center	L01680	Webster	86	03/18/13
Webster	G. A. Samman, M.D., P.A.	L05949	Webster	06	03/22/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Lubbock	Rosa of the South Plains, L.L.P. dba Rosa of the South Plains	L05484	Lubbock	19	03/19/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Rice University	L00631	Houston	28	03/26/13
Olney	Olney Hamilton Hospital District dba Hamilton Hospital	L03226	Olney	20	03/22/13
San Antonio	O'Neil and Associates, P.A.	L03710	San Antonio	18	03/25/13
San Antonio	Northeast Baptist Surgery Center, L.L.C. dba Village Specialty Surgical Center	L06119	San Antonio	03	03/20/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201301368
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 5, 2013

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by PHYSICIANS LIABILITY INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Oklahoma City, Oklahoma.

Application for admission to the State of Texas by REAL ADVANTAGE TITLE INSURANCE COMPANY, a foreign Title company. The home office is in Columbus, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301464
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 10, 2013

FY 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance

The commissioner of insurance considers the proposed fiscal year (FY) 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (TDI). Labor Code §405.0026 requires the commissioner to adopt an annual research agenda for the REG. To accomplish this, TDI must publish a proposed research agenda in the *Texas Register* for public review and comment. Upon request, the commissioner must hold a public hearing on the proposed research agenda.

In October 2012, on TDI's website, the REG requested research agenda suggestions from stakeholders and the general public. The REG also asked legislative offices for input on the FY 2013 Research Agenda.

TDI published the proposed FY 2013 Research Agenda for comment on the TDI website and in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9684). TDI received five comments from two individuals in support of the proposed FY 2013 Research Agenda with additions, and no requests for a public hearing.

Comment:

A commenter requested that TDI expand FY 2013 Research Agenda Item No. 2 to include a comparison of the health care provided by a health care provider when treating an injured employee through a workers' compensation health care network to the health care the same provider uses to treat an injured employee outside of a workers' compensation health care network. The commenter suggested using the International Classification of Diseases, Ninth Revision (ICD-9) codes to compare treatments and determine whether injured workers receive different treatments based on their network or non-network coverage status.

Agency Response:

TDI appreciates the comment. FY 2013 Research Agenda Item No. 2 currently addresses network participation, as Insurance Code §2053.012(a) and Labor Code §405.0025(b) require. Neither of these statutes authorizes a study comparing treatments offered to network and non-network claimants by individual health care providers. As a result, such a comparison would require TDI to adopt an additional agenda item that is not included in the current research budget. TDI declines to add the requested study to the FY 2013 Research Agenda, but will consider the commenter's suggestion for inclusion in the FY 2014 Research Agenda.

Comment:

A commenter requested that the REG conduct research to examine the extent to which physicians that treat injured employees for chronic pain comply with the requirements and recommendations of the Texas Medical Board rules in Title 22, Texas Administrative Code, Part 9, Chapter 170 (Pain Management). Specifically, the commenter recommended that the research project examine how frequently Texas physicians perform the documentation, consent, agreements, reviews, consultations, and referrals required or recommended by the Texas Medical Board. The commenter suggested that the Medical Quality Review Panel and the Texas Medical Board could assist the REG in this project.

Agency Response:

TDI appreciates the comment and recognizes the value of such a project. TDI would need to conduct a data call or survey to collect sufficient information for the project. Approximately 18,000 medical doctors treat injured employees in Texas, so collecting data for even a randomized selection of a representative sample would require resources that are not included in the current research budget. TDI declines to add this project to the FY 2013 Research Agenda, but will consider the commenter's suggestion for inclusion in a future research agenda.

Comment:

A commenter requested repeating the study conducted for the 2001 report *Striking the Balance: An Analysis of the Cost and Quality of Medical Care in the Texas Workers' Compensation System*.

Agency Response:

TDI appreciates the comment. In 2001, the Research and Oversight Council on Workers' Compensation (ROC) produced the above-named report. That report was commissioned and funded by HB 3697, 76th Legislature, Regular Session, 1999, and required the ROC to contract with a primary investigator that was selected through a competitive bidding process. The administrative data sources in that study included eight states other than Texas, four large multi-state employers, and a large group health insurance carrier in Texas covering the State of Texas Employees Retirement System. In addition to the administrative data, the study collected survey data from a random, stratified sample of injured employees in Texas and the comparison states.

While it would be cost-prohibitive to duplicate all elements of the 2001 ROC study this fiscal year, other recent REG projects have addressed some of the same issues in similar ways. For example, the 2012 REG report, *Health Care Cost and Utilization in the Texas Workers' Compensation System, 1998 - 2011*, examines medical costs and utilization trends in the workers' compensation system, including pharmacy and dental services.

In addition, the annual workers' compensation network report card required under Insurance Code §1305.502(a) - (d) and Labor Code §405.0025(b) reports annual medical costs, utilization, access to care, satisfaction, and return-to-work results for network and non-network

claims, with a particular focus on the medical service groups identified in the 2001 study as being consistently over-utilized in Texas.

Finally, the biennial report, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System*, published by the REG in December 2012, used many of the same methodologies and injury groupings as the ROC's 2001 study to compare medical costs, utilization, access to care, satisfaction with care, return-to-work outcomes, and functional outcomes before and after implementation of HB 7, 79th Legislature, Regular Session, 2005. TDI will continue to explore research opportunities to update the findings from the 2001 report.

Comment:

A commenter requested an analysis of the cost of durable medical equipment (including implantables) delivered and billed through medical facilities versus the cost of durable medical equipment (including implantables) billed directly to the carrier or payor as required by Labor Code §413.011(i).

Agency Response:

TDI appreciates the comment and will consider the feasibility of such a study in a future research agenda. Because the requested analysis would require an additional agenda item that is not included in the current research budget, TDI cannot include it in the FY 2013 Research Agenda.

Comment:

A commenter requested an analysis of the prescribing patterns for Schedule II and Schedule III opioids in the Texas workers' compensation system based on similar research performed in the California Workers' Compensation Institute study, *Prescribing Patterns of Schedule II Opioids in California Workers' Compensation* (March 2011).

Agency Response:

TDI appreciates the comment. In 2011, the REG published a report, *Pharmaceutical Utilization and Costs, 2006 - 2010*, which examined prescription patterns for claims across a variety of factors, including network status, injured body part, and drug type. In particular, the REG examined and reported on the utilization and costs of Schedule II opioids in Texas.

In 2012, another REG report, *Impact of the Texas Pharmacy Closed Formulary: A Preliminary Report*, examined the early impact of the recently implemented closed formulary on utilization and cost of "N-drugs" and other drugs in Texas. The report showed that the number of prescriptions for opioids classified as "N-drugs" decreased by 57 percent while the number of prescriptions for other opioids decreased by nine percent during the study period.

FY 2013 Research Agenda Item No. 7 is an update of the analysis of the impact of the closed formulary requirement on the utilization and cost patterns in pharmacy prescriptions for new claims, as well as a trend analysis for legacy claims. Pending available time and resources during this legislative session, TDI will consider conducting separate analyses for Schedule II and Schedule III opioids.

The commissioner approves and adopts the following FY 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group effective immediately:

1. Completion and publication of the seventh edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502(a) - (d) and Labor Code §405.0025(b)).
2. An annual examination of the frequency of employers and workers' compensation claims participating in certified health care delivery net-

works (required under Insurance Code §2053.012(a) and Labor Code §405.0025(b)).

3. An annual update of medical costs and utilization in the Texas workers' compensation system (required under Labor Code §405.0025(a)(4)).

4. An annual update of return-to-work outcomes for injured employees, including an examination of the impact of pharmaceutical utilization on return-to-work rates (required under Labor Code §405.0025(a)(4)).

5. An analysis of the impact of the Division of Workers' Compensation's adopted treatment guideline on non-network treatment utilization, medical costs, and other outcomes (required under Labor Code §405.0025(a)(4)).

6. An analysis of income benefit disputes, focusing on outcome trends for disputed issues, such as impairment ratings, compensability, extent of injury, and the ability of an injured employee to return to work (required under Labor Code §405.0025(a)(4)).

7. An analysis of the impact of the closed formulary requirement on utilization and costs patterns in pharmacy prescriptions for new and legacy claims (required under Labor Code §405.0025(a)(4)).

TRD-201301373

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: April 5, 2013

Texas Lottery Commission

Instant Game Number 1511 "20X Ca\$h"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1511 is "20X CASH". The play style is "slots-straight line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1511 shall be \$20.00 per Ticket.

1.2 Definitions in Instant Game No. 1511.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 10X SYMBOL, 20X SYMBOL, BELL SYMBOL, 4 LEAF CLOVER SYMBOL, LEMON SYMBOL, MONEY CLIP SYMBOL, RAINBOW SYMBOL, GOLD BAR SYMBOL, TREASURE CHEST SYMBOL, GOLD COIN SYMBOL, STACK OF CASH SYMBOL, PIGGY BANK SYMBOL, SAFE SYMBOL, SINGLE CHERRY SYMBOL, WALLET SYMBOL, STAR SYMBOL, WISHBONE SYMBOL, BANANA SYMBOL, SUN SYMBOL, MONEY BAG SYMBOL, ANCHOR SYMBOL, DIAMOND SYMBOL, LIMO SYMBOL, PEARLS SYMBOL, DIAMOND RING SYMBOL, WATCH SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, CROWN SYMBOL, LIGHTNING BOLT SYMBOL, MOON SYMBOL, HAT SYMBOL, CLUB SYMBOL, DAISY FLOWER SYMBOL, HEART SYMBOL, SPADE SYMBOL, BUTTERFLY

SYMBOL, KEY SYMBOL, \$20.00, \$25.00, \$50.00, \$100, \$150, \$200, \$500, \$1,000, \$10,000 and \$1,000,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1511 - 1.2D

PLAY SYMBOL	CAPTION
10X SYMBOL	WIN10X
20X SYMBOL	WIN20X
BELL SYMBOL	BELL
4 LEAF CLOVER SYMBOL	CLOVER
LEMON SYMBOL	LEMON
MONEY CLIP SYMBOL	CLIP
RAINBOW SYMBOL	RAINBW
GOLD BAR SYMBOL	GOLD
TREASURE CHEST SYMBOL	CHEST
GOLD COIN SYMBOL	COIN
STACK OF CASH SYMBOL	CASH
PIGGY BANK SYMBOL	PGYBNK
SAFE SYMBOL	SAFE
SINGLE CHERRY SYMBOL	CHERRY
WALLET SYMBOL	WALLET
STAR SYMBOL	STAR
WISHBONE SYMBOL	WSHBNE
BANANA SYMBOL	BANANA
SUN SYMBOL	SUN
MONEY BAG SYMBOL	MNYBAG
ANCHOR SYMBOL	ANCHOR
DIAMOND SYMBOL	DMND
LIMO SYMBOL	LIMO
PEARLS SYMBOL	PEARLS
DIAMOND RING SYMBOL	RING
WATCH SYMBOL	WATCH
HORSESHOE SYMBOL	HRSHE
POT OF GOLD SYMBOL	POTGLD
CROWN SYMBOL	CROWN
LIGHTNING BOLT SYMBOL	LGHTNG
MOON SYMBOL	MOON
HAT SYMBOL	HAT
CLUB SYMBOL	CLUB
DAISY FLOWER SYMBOL	FLOWER
HEART SYMBOL	HEART
SPADE SYMBOL	SPADE
BUTTERFLY SYMBOL	BTRFLY
KEY SYMBOL	KEY
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$150	ONEFIFTY
\$200	TWO HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$10,000	10 THOU
\$1,000,000	1MILLION

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$70.00, \$100, \$150, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1511), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1511-0000001-001.

K. Pack - A Pack of "20X CASH" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "20X CASH" Instant Game No. 1511 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "20X CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 80 (eighty) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals a 10X Play Symbol, the player wins 10 times the PRIZE for that GAME. If a player reveals a 20X Play Symbol, the player wins 20 times the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 80 (eighty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 80 (eighty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 80 (eighty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 80 (eighty) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On all Tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

E. This Ticket consists of sixty (60) Play Symbols and twenty (20) Prize Symbols.

F. On winning and Non-Winning Tickets, the top cash prizes of \$10,000 and \$1,000,000 will each appear at least once, except on Tickets winning twenty (20) times.

G. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

H. There will be no occurrence of three (3) or more consecutive identical Play Symbols vertically or diagonally.

I. Play Symbols will appear at least once and no more than three (3) times on a Ticket, with respect to other parameters, play action or prize structure.

J. The "10X" Play Symbol will only appear with the caption WIN10X and will only appear according to the prize structure.

K. The "20X" Play Symbol will only appear with the caption WIN20X and will only appear according to the prize structure.

L. The "10X" and "20X" Play Symbols will not appear on a Non-Winning Ticket.

M. On "10X" or "20X" winning GAMES, the remaining two (2) Play Symbols within that GAME will be different.

N. A "10X" Play Symbol and a "20X" Play Symbol will only appear as per prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "20X CASH" Instant Game prize of \$20.00, \$25.00, \$50.00, \$70.00, \$100, \$150, \$200 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$70.00, \$100, \$150, \$200 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "20X CASH" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas

Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "20X CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "20X CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "20X CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes avail-

able in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make

payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 Tickets in the Instant Game No. 1511. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1511 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	320,000	9.38
\$25	200,000	15.00
\$50	300,000	10.00
\$70	52,500	57.14
\$100	93,500	32.09
\$150	14,500	206.90
\$200	1,500	2,000.00
\$500	47	63,829.79
\$1,000	19	157,894.74
\$10,000	6	500,000.00
\$1,000,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1511 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1511, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301452

Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 9, 2013



Office of the Controller, *Lotto Texas*® Jackpot Estimation, Procedure OC-JE-002

The Texas Lottery Commission published proposed amendments to the attached procedure *Lotto Texas*® Jackpot Estimation, OC-JE-002, a procedure that affects *Lotto Texas*® players, with a Notice of Public Comment Hearing in the January 25, 2013, issue of the *Texas Register* (38 TexReg 428). A Public Comment Hearing was held on Monday, February 25, 2013, at 2:00 p.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received no written comments from individuals, groups, or associations during the public comment period. The Texas Lottery

Commission adopted the amended procedure at the April 4, 2013 Commission Meeting. The effective date of the amended procedure is April 14, 2013.

The procedure incorporates recent revisions to the *Lotto Texas*® game, including changes to the annuity period, starting jackpot amount and roll increments.



TEXAS LOTTERY COMMISSION

OFFICE OF THE CONTROLLER

PROCEDURE

Number: OC-JE-002	Title: <i>Lotto Texas®</i> Jackpot Estimation	Approval: Texas Lottery Commission
Page: 1 of 5		
Effective Date: April 14, 2013	Approval Date: April 4, 2013	Review Date:

PROCEDURE NUMBER

OC-JE-002 [Supersedes OC-JE-002 effective October 19, 2011]

PURPOSE

To provide policy guidelines for projecting and estimating sales for future *Lotto Texas* estimated annuitized jackpot prize amounts that will be advertised.

SCOPE

This procedure applies to staff of the Texas Lottery Commission.

RESPONSIBILITY

The final approval for the estimated annuitized jackpot amount to advertise will be provided by the Texas Lottery Commission Executive Director, or their designee.

GENERAL

The Texas Lottery Commission (TLC) ensures that *Lotto Texas* sales and other information necessary to estimate the jackpot amount to be advertised is utilized in preparation of the jackpot estimation. The Executive Director, or their designee, has the sole authority to approve the final projected estimated annuitized jackpot amount to advertise for *Lotto Texas* Drawings.

The "Lotto Texas" On-Line Game rule is found in the Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter D, Rule 401.305. The Lotto Texas Game rule states, "The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 30 annual installments; or the amount advertised in accordance with subsection (e) of this section as the estimated jackpot for the drawing, paid in 30 annual installments."

Number: OC-JE-002	Title: <i>Lotto Texas</i> ® Jackpot Estimation	Approval: Texas Lottery Commission
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A roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The advertised amount shall be an amount payable in 30 annual installments. To the extent that the advertised amount is based on projected sales, the projections shall be fair and reasonable. The Executive Director, or designee, may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections.

PROCEDURE

I. Timeline

1. Distribution of estimated jackpot information as outlined in Section VI shall be completed by close of business, or 5:00 p.m. on Wednesdays and Fridays.
2. The advertised jackpot for the current draw may be increased based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot. The Executive Director, or their designee, will be consulted regarding the time frame for increasing the advertised jackpot amount.
3. In the event Wednesday or Friday falls on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved, or if, due to a large jackpot level, a Friday estimation is delayed until Saturday, the above deadlines may be revised as needed.

II. Compile Estimate Information:

1. Determine the Interest Factor: Investment cost information is obtained from the Texas Treasury Safekeeping Trust Company prior to each estimation. Commission staff requests the estimated cost of 30 annual payments to yield the advertised jackpot. The interest factor is calculated by dividing the advertised jackpot by the estimated cost, including the initial payment required, to fund an investment stream that would yield the total advertised jackpot over a 30-year period. Note that the investment information may not be obtainable if the appropriate financial institutions and/or brokers are not open for business such as on business holidays. In those instances either a request for the information is made the day before or the prior estimation interest factor is used.
2. Compile actual *Lotto Texas* draw sales for the current drawing.

III. Estimate the Sales and Jackpot Support for the Current and Future Draws:

Commission staff will estimate draw sales and jackpot support for the current *Lotto Texas* drawing and project the jackpot to be advertised for the next drawing in the event of a roll. Estimations may be made on a day prior to Wednesday or Friday if Wednesday or Friday fall on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved.

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1. Project the *Lotto Texas* draw sales for the current drawing: Estimations are made each Wednesday and Friday. If the draw day is on a Wednesday, estimate sales for that Wednesday. If the draw day is on a Saturday, estimate sales for Friday and Saturday. However, jackpot estimations may be updated at any time if Commission staff believe that changes in *Lotto Texas* sales or other factors may impact jackpot prize support. Estimate draw sales by using historical sales data and other relevant factors that may impact sales. Combine the actual draw sales to date with the projected draw sales for the remainder of the draw period to calculate the total projected draw sales.
 - a) Evaluate historical sales data: Project the current draw day sales by estimating the expected increase/decrease in sales using the hourly sales trend and/or growth pattern for previous like-day drawings.
 - b) Other factors to consider in estimating draw sales, along with evaluating historical sales data, include but are not limited to:
 - Wednesday draw sales are generally lower than Saturday draw sales.
 - length of time since a large jackpot was advertised
 - effect of holidays (Holidays generally cause sales to peak early and then fall below average on the holiday.)
 - weather throughout the state, especially in key markets
 - sales trends for like jackpots and/or most recent roll cycles
 - current advertising/promotions schedule
 - relevant media issues
 - on-line terminal connection problems
 - jackpots advertised for games such as Mega Millions and Powerball
 - new on-line game launches or other game enhancements
 - overall trends in sales over similar time periods
 - other - IRS deadlines, spring break, strength of the economy, etc.

It is not necessary to evaluate all these factor for every estimate. Sound judgment should be used in determining which factors to consider.

2. Evaluate Sales Support for the Current Advertised Jackpot: Determine the projected *Lotto Texas* jackpot sales support given the current advertised jackpot.
 - a) If sales proceeds are not sufficient to pay a jackpot prize, the TLC shall use funds from the State Lottery Account as identified in Government Code, Section 466.355.
 - b) The advertised jackpot for the current draw may be increased prior to the draw based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot.

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3. Estimate sales for the next draw in the event of a rollover: To estimate sales for the next draw, use historical sales data and any other relevant information as described in 1.a) and 1.b) above.
4. Project a range of prospective estimated annuitized jackpot prize amounts that may be advertised in the event of a rollover: Use estimated draw sales for the current draw, estimated draw sales for the next draw, and the estimated interest factor to identify a range of prospective estimated annuitized jackpot prize amounts.
 - a) The estimated annuitized jackpot prize amount will automatically be set to five million dollars for the first draw following a draw in which at least one jackpot prize ticket is identified.
 - b) In the event of a rollover, the estimated annuitized jackpot will roll in increments of at least \$250,000 more than the current advertised jackpot.

IV. Approval of Estimated Annuitized Jackpot Amount to Advertise:

1. The recommendation of the jackpot amount to advertise in the event of a rollover should typically be based on the "low end" sales support shown at the time of estimation, however, for marketing related purposes there may be instances when the recommended jackpot could be based on an amount exceeding the "high end" sales support.
2. The range of potential jackpots to advertise in the event of a rollover should be used by management as a tool to understand the amount of additional funds that may be required to fund the jackpot prize. In the event that "low end" sales do not support a roll from the currently advertised jackpot, the TLC will roll the jackpot in \$250,000 increments.
3. The recommended jackpot amount to advertise is presented to the Executive Director, or their designee, for final approval of the subsequent (annuitized) jackpot prize amount that will be advertised in the event of a *Lotto Texas* jackpot rollover. The *Lotto Texas Jackpot Estimation Worksheet* presented will state the projected current (annuitized) jackpot prize amount for the current draw.

V. Distribution of Estimated Jackpot Information on the Agency Website:

1. The Commission staff will perform the following:
 - a) After the Executive Director, or their designee, has approved an advertised estimated jackpot under subsection (e) of the *Lotto Texas On-Line Game Rule*, Commission staff will post to the agency website the amount of ticket sales, if any, for previous drawings in the roll cycle, the amount of projected ticket sales for the upcoming drawing, investment information used to determine the advertised

Number: OC-JE-002	Title: <i>Lotto Texas</i> ® Jackpot Estimation	Approval: Texas Lottery Commission
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Effective Date: April 14, 2013	Approval Date: April 4, 2013	Review Date:

estimated jackpot, and other information used to determine the advertised estimated jackpot.

b) The interest factor calculated by the agency based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the TLC to determine the advertised jackpot will be posted to the agency website.

c) The approved estimated jackpot for the next draw in the roll cycle and the approximate cash value of the estimated jackpot will be posted to the agency website and will be published after the draw if no jackpot tickets were sold.

d) In addition, the approximate cash value of the jackpot prize amount for five million dollars is entered on the advertised jackpot screens for posting to the agency website and publishing after the draw if a jackpot prize ticket is sold for a drawing.

VI. Distribution of information when the current advertised jackpot prize amount is changed:

If the estimated annuitized jackpot prize amount that is currently advertised is changed prior to the drawing, Commission personnel will communicate the new *Lotto Texas* estimated annuitized jackpot prize amount to advertise to all pertinent TLC and vendor staff. Media Relations will notify the media that there is a new estimated annuitized jackpot prize amount being advertised.

TRD-201301437
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 8, 2013



North Central Texas Council of Governments

Request for Qualifications and Interest

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.

NCTCOG is soliciting statements of qualifications and interest from vendors for the development and creative design of an interactive website for the Dallas-Fort Worth (DFW) Clean Cities Coalition that will be a product of the American Recovery and Reinvestment Act (ARRA) of 2009. This website will serve as the new home for the DFW Clean Cities Coalition, which is currently housed on the NCTCOG server at www.nctcog.org/cleancities. It will be designed to engage both public and private fleet managers, alternative fuel and advanced technology

vendors/fuel providers and the general public who wish to learn more about the program. The website will need to overview Coalition Information, Membership Information, Data, Meeting and Event Information, News, Funding, Alternative Fuels, ARRA-Funded Projects, and Success Stories. It will also be used to provide links to the U.S. Department of Energy's Clean Cities website so users can interact with online maps, tools and calculators. It is of strong interest to make this touch-screen compatible and mobile-compliant.

Due Date

Statements of Qualifications and Interest must be received no later than 5:00 p.m., on Friday, May 10, 2013, to Pamela Burns, Communications Supervisor, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Qualifications and Interest will be available at www.nctcog.org/rfp by the close of business on Friday, April 19, 2013.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Qualifications and Interest. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201301442

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: April 9, 2013

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Transfer of Land - Cherokee County

Texas State Railroad Unused Right-of-Way to City of Rusk

In a meeting on May 23, 2013 the Texas Parks and Wildlife Commission (the Commission) will consider transferring a tract or tracts of land consisting of remnant right-of-way associated with the Texas State Railroad, but not needed for operations, to the City of Rusk. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201301472

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: April 10, 2013

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 5, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend Its State-Issued Certifi-

cate of Franchise Authority; to add the city limits of Appleby, Texas, Project Number 41350.

The requested amendment is to expand the service area footprint to include the municipality of Appleby, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All inquiries should reference Project Number 41350.

TRD-201301446

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 9, 2013

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 5, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Northland Cable Television, Inc. to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41351.

The requested amendment is to expand the service area footprint to include the municipality of Marble Falls, Texas

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All inquiries should reference Project Number 41351.

TRD-201301445

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 9, 2013

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 5, 2013, for an amendment to certificated service area for a service area exception within Irion County, Texas.

Docket Style and Number: Application of Southwest Texas Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Irion County. Docket Number 41349.

The Application: Southwest Texas Electric Cooperative, Inc. (SWTEC) filed an application for a service area exception to allow SWTEC to provide service to a specific customer located within the certificated service area of Concho Valley Electric Cooperative, Inc. (CVEC). CVEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 26, 2013 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 41349.

TRD-201301450
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2013



Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 8, 2013, for an amendment to certificated service area for a service area exception within Kerr County, Texas.

Docket Style and Number: Application of Central Texas Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Kerr County. Docket Number 41356.

The Application: On April 8, 2013, Central Texas Electric Cooperative, Inc. (CTEC) filed an application for a service area exception to allow CTEC to provide service to a specific customer located within the certificated service area of Kerrville Public Utility Board (KPUB). KPUB has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 30, 2013 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 41356.

TRD-201301451
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 2, 2013, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Totalcom Communications, LLC to Implement a Minor Rate Change in Its Local Exchange Tariff, Pursuant to Substantive Rule §26.171, Tariff Control Number 41341.

The Application: On April 2, 2013, Totalcom Communications, LLC (Totalcom or Applicant) filed an application for revisions to its Local Exchange Tariff to increase the rates of the residential monthly Local Exchange Access Line Rate for all exchanges, the Maintenance Service Charge for all customers, and the Rotary/Multiline/Trunk Hunt and PBX Trunk Services for business customers. Totalcom is also proposing to bundle the monthly Local Exchange Access Line Rate with Tone

Dialing Service for residential and business customers. Customers currently not subscribing to Tone Dialing Service will be charged the new bundled rate. Totalcom proposed an effective date of May 1, 2013. The estimated annual revenue increase recognized by the Applicant is \$38,777 or 1.74% of its gross annual intrastate revenues. The Applicant has 3,220 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 29, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 29, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41341.

TRD-201301363
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 2, 2013, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of North Texas Telephone Company to Implement a Minor Rate Change in Its Local Exchange Tariff, Pursuant to Substantive Rule §26.171, Tariff Control Number 41342.

The Application: On April 2, 2013, North Texas Telephone Company (North Texas or Applicant) filed an application for revisions to its Local Exchange Tariff to increase the rates of the residential monthly Local Exchange Access Line Rate for all exchanges and the Maintenance Service Charge for all customers. North Texas is also proposing to bundle the monthly Local Exchange Access Line Rate with Tone Dialing Service for residential and business customers. North Texas proposed an effective date of May 1, 2013. Customers not currently subscribing to Tone Dialing Service will be charged the new bundled rate. The estimated annual revenue increase recognized by the Applicant is \$12,121 or 3.80% of its gross annual intrastate revenues. The Applicant has 506 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 29, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 29, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and

speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41342.

TRD-201301364

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 4, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 3, 2013, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Livingston Telephone Company to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41347.

The Application: On April 3, 2013, Livingston Telephone Company (Livingston or Applicant) filed an application for revisions to its Customer Services Tariff to increase the monthly residential 1-Party and 4-Party Local Exchange Access Line Rates and the business Local Exchange Access Line Rates for 1-Party, Rotary Key Trunk, and PBX Trunk. Livingston proposed an effective date of June 1, 2013. The estimated annual revenue increase recognized by the Applicant is \$188,529.96 or 4.82% of its gross annual intrastate revenues. The Applicant has 6,225 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41347.

TRD-201301365

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 4, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 5, 2013, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Taylor Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41354.

The Application: On April 5, 2013, Taylor Telephone Cooperative, Inc. (Taylor Telephone or Applicant) filed an application for revisions to its Member Services Tariff to increase residential and business access line rates. Taylor Telephone proposed an effective date of May 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$101,232 in gross annual intrastate revenues. The Applicant has 5,620 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41354.

TRD-201301447

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 9, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 5, 2013, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of South Plains Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41355.

The Application: On April 5, 2013, South Plains Telephone Cooperative, Inc. (South Plains or Applicant) filed an application for revisions to its Member Services Tariff to increase access line rates in the exchanges of Acuff, Merrell, and Ransom Canyon, and incorporate the tone dialing charge into the access line rates. South Plains proposed an effective date of May 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$39,065 in gross annual intrastate revenues. The Applicant has 3,920 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41355.

TRD-201301448
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2013



Public Notice of Request for Comments on Strawman Rule

The staff of the Public Utility Commission of Texas (commission) request comments regarding a strawman that would amend P.U.C. Substantive Rule §25.43, relating to Provider of Last Resort (POLR).

Project Number 41277, *Rulemaking to Amend P.U.C. Subst. R. §25.43, Relating to Provider of Last Resort (POLR)*, has been assigned to this proceeding.

The commission staff strawman rule will be filed in Central Records under Project Number 41277 by Friday, April 26, 2013. The commission requests interested persons file written comments and reply comments on this strawman rule.

Comments are to be filed before 3:00 p.m. CPT, Thursday, May 16, 2013. Reply comments are to be filed before 3:00 p.m. CPT, Tuesday, May 28, 2013. Comments and reply comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments and reply comments should reference Project Number 41277.

Questions concerning this notice should be referred to Cliff Crouch, Competitive Markets Division, (512) 936-7296. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201301444
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2013



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Lago Vista, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Rusty Allen Airport during the course of the next five years through multiple grants.

Current Project: City of Lago Vista. TxDOT CSJ No.: 1314LAGOV. Scope: Provide engineering/design services to reconstruct Hangar Access Taxiway.

The HUB goal for the current project is 9.6 percent. The TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following: construct new hangar access taxiway; expand apron; rehabilitate and mark Runway 15-33; rehabilitate taxiways and apron.

The City of Lago Vista reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Rusty Allen Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SIX completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than May 21, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects.html under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201301361



Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Georgetown, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Georgetown Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Georgetown. TxDOT CSJ No.: 1314GRGTN. Scope: Provide engineering/design services to:

1. replace MIRL (w/Hold and Exit signs) on Runway 18-36
2. replace MIRL (w/ Hold and Exit signs) on Runway 11-29
3. install PAPI-2 at Runway 11 and Runway 29
4. mark Runways 18-36 and 11-29
5. construct new Taxiways A, B, C, D, F, G, and Holding Areas
6. pavement demolition and sodding
7. install MITL and Guidance Signs on Taxiways A, B, C, D, E, F, and G
8. install MITL and Guidance Signs on Taxiways E, I, and S
9. modify Apron Tiedown and Taxilane markings
10. relocate fuel farm
11. rehabilitate Taxiways E, I, N, and S
12. rehabilitate Terminal Apron
13. rehabilitate Southeast Corporate Apron

The DBE goal for the current project is 6 percent. The TxDOT Project Manager is Harry Lorton.

Future scope work items for engineering/design services within the next five years may include the following: relocate ASOS or install new AWOS for terminal apron expansion; rehabilitate ramp at T-Hangar B and C; rehabilitate and mark RW 18-36, RW 11-29; expand main terminal apron and relocate taxilanes north and south; construct new hangar access TWs; and drainage improvements.

The City of Georgetown reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Georgetown Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 30, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects.html under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201301443

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 9, 2013



Notice of Public Hearings on Proposed Restrictions on Use of State Highway

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on proposed restrictions initiated by the department establishing lane use restrictions for certain classes

of vehicles on various interstate, U.S., and state highways in Dallas, Tarrant, and Parker Counties.

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restrictions would prohibit those vehicles from using the left or inside lane on the following highways:

1. Interstate Highway 20 in Parker County from 0.2 miles east of Mikus Road (FM 5) in Willow Park to 0.5 miles east of FM 1187/FM 3325 in Fort Worth;
2. Interstate Highway 35W in Tarrant County from 0.1 miles south of Vickery Blvd. in Fort Worth to 0.4 miles north of Alsbury Blvd. in Burleson;
3. Interstate Highway 820 in Tarrant County from 0.3 miles east of Blue Mound Road (FM 156) in Fort Worth to Westpoint Blvd. in Fort Worth;
4. State Highway 121 in Tarrant County from 0.5 miles east of N. Riverside Dr. in Fort Worth to 0.2 miles west of Handley Ederville Road in Richland Hills;
5. State Highway 360 in Tarrant County from 0.1 miles south of E. Mayfield Road in Arlington to 0.1 miles south of Trinity Blvd. in Fort Worth;
6. Interstate Highway 30 in Dallas County from Sylvan Ave. in Dallas to the Tarrant County Line in Grand Prairie;
7. Interstate Highway 30 in Dallas and Rockwall Counties from Belt Line in Garland to SH 205 in Rockwall;
8. United States Highway 75 in Dallas and Collin Counties from IH 635 in Dallas to SH 121 South in McKinney;
9. Interstate Highway 635 in Dallas County from IH 35E in Dallas to the Tarrant County Line in Coppell;
10. Interstate Highway 635 in Dallas County from US 75 in Dallas to IH 20 in Balch Springs;
11. United States Highway 175 in Dallas County from SH 310 in Dallas to IH 20 in Balch Springs;
12. Interstate Highway 35E in Ellis and Dallas Counties from US 77 in Red Oak to IH 30 in Dallas;
13. State Loop 12 in Dallas County from SS 408 in Dallas to SS 348 in Dallas;
14. State Highway 114 in Dallas County from SS 348 in Irving to the Tarrant County Line in Irving; and
15. Interstate Highway 45 in Ellis County from FM 85 in Ennis to the Navarro County Line.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.603(f) - (h), the Texas Department of Transportation will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing, preceded by

a 60-minute open house, will be held at the following time and location:

Thursday, May 16, 2013 at 6:00 p.m.

North Central Texas Council of Governments

Transportation Council Room, Centerpoint Two, 616 Six Flags Drive
Arlington, Texas 76011

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 5:00 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Bill Hale, P.E., District Engineer, Dallas District, Texas Department of Transportation, 4777 East Highway 80, Mesquite, Texas 75150-6643. The deadline for receipt of written comments is 5:00 p.m. on May 20, 2013.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing-impaired, or non-English speakers, readers, large print, or Braille, are requested to contact Andrew Oberlander, P.E. at (214) 320-4438 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact Andrew Oberlander, P.E. at (214) 320-4438.

TRD-201301360

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 4, 2013

Texas Water Development Board

Applications for April 2013

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #10365, a request from the Agua Special Utility District, P.O. Box 4379, Mission, Texas 78573-0075, received October 31, 2012, for financial assistance in the amount of \$4,750,000, consisting of a \$2,375,000 loan and \$2,375,000 in loan forgiveness from the Clean Water State Revolving Fund-Disadvantaged Communities Program to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73658, a request from the Aqua Water Supply Corporation, P.O. Drawer P, Bastrop, Texas 78602, received December 21, 2012, for financial assistance in the amount of \$181,768, consisting of a \$54,530 loan and \$127,238 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design costs related to wastewater system improvements.

Project ID #73657, a request from the City of Buda, P.O. Box 1218, Buda, Texas 78610-1218, received November 14, 2012, for financial assistance in the amount of \$401,500, consisting of a \$125,000 loan and \$276,500 in loan forgiveness from the Clean Water State Revolving Fund to provide planning and design costs for first time wastewater service.

Project ID #73659, a request from the City of McAllen, P.O. Box 220, McAllen, Texas 78505-0220, received January 2, 2013, for financial assistance in the amount of \$3,245,393, consisting of a \$2,995,000 loan and \$250,393 in loan forgiveness from the Clean Water State Revolving

Fund to finance planning and design costs related to wastewater system improvements.

Project ID #73653, a request from the City of Wimberley, P.O. Box 2027, Wimberley, Texas 78676-6927, received October 30, 2012, for a loan in the amount of \$650,000 from the Clean Water State Revolving Fund to finance planning, acquisition and design costs relating to wastewater system improvement.

Project ID #62561, a request from the City of Gordon, P.O. Box 227, Gordon, Texas 76453-0227, received September 4, 2012, for a loan in the amount of \$1,170,000 from the Drinking Water State Revolving Fund to finance the water system improvements, utilizing the pre-design option.

Project ID #62588, a request from the City of Willow Park, 516 Ranch House Road, Willow Park, Texas 76087, received September 4, 2012, for a loan in the amount of \$685,000 from the Drinking Water State Revolving Fund to finance the water system improvements, utilizing the pre-design commitment option.

Project ID #10435, a request from the City of McAllen, P.O. Box 220, McAllen, Texas 78501, received September 27, 2012, for financial assistance in the amount of \$434,000, consisting of a \$217,000 loan and a \$217,000 grant from the Economically Distressed Areas Program to provide planning costs for first time wastewater service.

Project ID #21729, a request from the Olmito Water Supply Corporation, P.O. Box 36, Olmito, Texas 78575-0036, received December 7, 2012, for financial assistance in the amount of \$2,760,000 consisting of a \$1,040,000 loan from the Texas Water Development Fund (Taxable) and a \$1,720,000 loan from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

TRD-201301454

Kenneth Petersen

General Counsel

Texas Water Development Board

Filed: April 9, 2013

Workforce Solutions Capital Area

Request for Proposals - Reissued

The Workforce Solutions Capital Area Workforce Board (Board) is soliciting proposals from qualified vendors to provide an on-line, web-based work readiness training and certification system, including a learning management system component. A copy of the Request for Proposals (RFP) may be obtained from the Board beginning at 10:00 a.m., April 4, 2013, at 6505 Airport Boulevard, Suite 101E, Austin, Texas 78752; or by email request to peter.brodeur@wfscapi-

talarea.com. The RFP may also be downloaded from www.wfscapitalarea.com. All proposals must be received on or before 4:00 p.m., April 26, 2013. This is a reissuance of an RFP previously released on February 4, 2013 and published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 1062).

Workforce Solutions Capital Area is an Equal Opportunity Employer/Program.

TRD-201301359

Alan D. Miller

Executive Director

Workforce Solutions Capital Area

Filed: April 4, 2013

Workforce Solutions Deep East Texas

Request for Proposals #13-314

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is soliciting proposals for **Management and Operation of Child Care Services** in the Deep East Texas region effective October 1, 2013.

Proposal packets are available on the Board's website at www.detwork.org or request a copy from:

Darla Johnson, Procurement/Contract Manager

Workforce Solutions Deep East Texas

539 S. Chestnut, Suite 300

Lufkin, Texas 75901

(936) 639-8898

djohnson@detwork.org

Deadline for submission of proposals is **3:00 p.m. CST on Tuesday, May 28, 2013**. Late proposals will not be accepted; no exceptions to this deadline.

Workforce Solutions Deep East Texas is an equal opportunity employer/program. Auxiliary Aids and Services are available upon request to individuals with disabilities. TX Relay: English 1-800-735-2989, Spanish 1-800-662-4954 or 711.

TRD-201301362

Marilyn Hartsook

Interim Executive Director

Workforce Solutions Deep East Texas

Filed: April 4, 2013

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)